

## SUBCHAPTER C—NATIONALITY REGULATIONS

### PART 301—NATIONALS AND CITIZENS OF THE UNITED STATES AT BIRTH

AUTHORITY: 8 U.S.C. 1103, 1401; 8 CFR part 2.

SOURCE: 62 FR 39927, July 25, 1997, unless otherwise noted.

#### § 301.1 Procedures.

(a) *Application.* (1) As provided in 8 CFR part 341, a person residing in the United States who desires to be documented as a United States citizen pursuant to section 301(h) of the Act may apply for a passport at a United States passport agency or may submit an application on the form specified by USCIS in accordance with the form instructions and with the fee prescribed by 8 CFR 103.7(b)(1). The applicant will be notified when and where to appear before a USCIS officer for examination on his or her application.

(2) A person residing outside of the United States who desires to be documented as a United States citizen under section 301(h) of the Act shall make his or her claim at a United States embassy or consulate, in accordance with such regulations as may be prescribed in the Secretary of State.

(b) *Oath of allegiance; issuance of certificate.* Upon determination by the district director that a person is a United States citizen pursuant to section 301(h) of the Act, the person shall take the oath of allegiance, prescribed in 8 CFR part 337, before an officer of the Service designated to administer the oath of allegiance within the United States, and a certificate of citizenship shall be issued. The person shall be considered a United States citizen as of the date of his or her birth.

[62 FR 39927, July 25, 1997, as amended at 74 FR 26940, June 5, 2009; 76 FR 53797, Aug. 29, 2011]

### PART 306—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: VIRGIN ISLANDERS

Sec.

306.1 Persons eligible.

306.2 United States citizenship; when acquired.

306.11 Preliminary application form; filing; examination.

306.12 Renunciation forms; disposition.

AUTHORITY: Secs. 103, 306, 332, 66 Stat. 173, 237, 252; 8 U.S.C. 1103, 1406, 1443.

SOURCE: 22 FR 9812, Dec. 6, 1957, unless otherwise noted.

#### § 306.1 Persons eligible.

Any Danish citizen who resided in the Virgin Islands of the United States on January 17, 1917, and in those Islands, Puerto Rico, or the United States on February 25, 1927, and who had preserved his Danish citizenship by making the declaration prescribed by Article VI of the treaty entered into between the United States and Denmark on August 4, 1916, and proclaimed January 25, 1917, may renounce his Danish citizenship before any court of record in the United States irrespective of his place of residence, in accordance with the provisions of this part.

#### § 306.2 United States citizenship; when acquired.

Immediately upon making the declaration of renunciation as described in § 306.12 the declarant shall be deemed to be a citizen of the United States. No certificate of naturalization or of citizenship shall be issued by the clerk of court to any person obtaining, or who has obtained citizenship solely under section 306(a)(1) of the Immigration and Nationality Act or under section 1 of the act of February 25, 1927.

#### § 306.11 Preliminary application form; filing; examination.

A person of the class described in § 306.1 shall submit to the Service on Form N-350 preliminary application to renounce Danish citizenship, in accordance with the instructions contained therein. The applicant shall be notified in writing when and where to appear

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before a representative of the Service for examination as to his eligibility to renounce Danish citizenship and for assistance in filing the renunciation.

### § 306.12 Renunciation forms; disposition.

The renunciation shall be made and executed by the applicant under oath, in duplicate, on Form N-351 and filed in the office of the clerk of court. The usual procedural requirements of the Immigration and Nationality Act shall not apply to proceedings under this part. The fee shall be fixed by the court or the clerk thereof in accordance with the law and rules of the court, and no accounting therefor shall be required to be made to the Service. The clerk shall retain the original of Form N-351 as the court record and forward the duplicate to the district director exercising administrative naturalization jurisdiction over the area in which the court is located.

## PART 310—NATURALIZATION AUTHORITY

Sec.

- 310.1 Administrative naturalization authority.
- 310.2 Jurisdiction to accept applications for naturalization.
- 310.3 Administration of the oath of allegiance.
- 310.4 Judicial naturalization authority and withdrawal of petitions.
- 310.5 Judicial review.

AUTHORITY: 8 U.S.C. 1103, 1421, 1443, 1447, 1448; 8 CFR 2.

SOURCE: 56 FR 50480, Oct. 7, 1991, unless otherwise noted.

### § 310.1 Administrative naturalization authority.

(a) *Attorney General*. Commencing October 1, 1991, section 310 of the Act confers the sole authority to naturalize persons as citizens of the United States upon the Attorney General.

(b) *Commissioner of the Immigration and Naturalization Service*. Pursuant to § 2.1 of this chapter, the Commissioner of the Immigration and Naturalization Service is authorized to perform such acts as are necessary and proper to implement the Attorney General's au-

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thority under the provisions of section 310 of the Act.

### § 310.2 Jurisdiction to accept applications for naturalization.

USCIS shall accept an application for naturalization from an applicant who is subject to a continuous residence requirement under section 316(a) or 319(a) of the Act as much as three months before the date upon which the applicant would otherwise satisfy such continuous residence requirement in the State or Service district, as defined in 8 CFR 316.1, where residence is to be established for naturalization purposes. At the time of examination on the application, the applicant will be required to prove that he or she satisfies the residence requirements for the residence reflected in the application.

[56 FR 50480, Oct. 7, 1991, as amended at 76 FR 53797, Aug. 29, 2011]

### § 310.3 Administration of the oath of allegiance.

(a) An applicant for naturalization may elect, at the time of filing of, or at the examination on, the application, to have the oath of allegiance and renunciation under section 337(a) of the Act administered in a public ceremony conducted by the Service or by any court described in section 310(b) of the Act, subject to section 310(b)(1)(B) of the Act.

(b) The jurisdiction of all such courts specified to administer the oath of allegiance shall extend only to those persons who are resident within the respective jurisdictional limits of such courts, except as otherwise provided in section 316(f)(2) of the Act. Persons who temporarily reside within the jurisdictional limits of a court in order to pursue an application properly filed pursuant to section 319(b), 328(a), or 329 of the Act or section 405 of the Immigration Act of 1990 are not subject to the exclusive jurisdiction provisions of section 310(b)(1)(B) of the Act.

(c)(1) A court that wishes to exercise exclusive jurisdiction to administer the oath of allegiance for the 45-day period specified in section 310(b)(1)(B) of the Act shall notify, in writing, the district director of the Service office having jurisdiction over the place in which the court is located, of the

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court's intent to exercise such exclusive jurisdiction.

(2) At least 60 days prior to the holding of any oath administration ceremony referred to in § 337.8 of this chapter, the clerk of court shall give written notice to the appropriate district director of the time, date, and place of such ceremony and of the number of persons who may be accommodated.

(d) A court that has notified the Service pursuant to paragraph (c)(1) of this section shall have exclusive authority to administer the oath of allegiance to persons residing within its jurisdiction for a period of 45 days beginning on the date that the Service notifies the clerk of court of the applicant's eligibility for naturalization. Such exclusive authority shall be effective only if on the date the Service notifies the clerk of court of the applicant's eligibility, the court has notified the Service of the day or days during such 45-day period on which the court has scheduled oath administration ceremonies available to the applicant. The Service must submit the notification of the applicant's eligibility to the clerk of court within 10 days of the approval of the application pursuant to § 337.8 of this chapter.

(e) *Waiver of exclusive authority.* A court exercising exclusive authority to administer the oath of allegiance pursuant to paragraph (c) of this section may waive such exclusive authority when it is determined by the court that the Service failed to notify the court within a reasonable time prior to a scheduled oath ceremony of the applicant's eligibility such that it is impractical for the applicant to appear at that ceremony. The court shall notify the district director in writing of the waiver of exclusive authority as it relates to a specific applicant, and the Service shall promptly notify the applicant. The Service shall then arrange for the administration of the oath of allegiance pursuant to § 337.2 of this chapter.

[58 FR 49911, Sept. 24, 1993, as amended at 66 FR 32144, June 13, 2001]

### § 310.4 Judicial naturalization authority and withdrawal of petitions.

(a) *Jurisdiction.* No court shall have jurisdiction under section 310(a) of the

Act, to naturalize a person unless a petition for naturalization with respect to that person was filed with the naturalization court before October 1, 1991.

(b) *Withdrawal of petitions.* (1) In the case of any petition for naturalization which was pending in any court as of November 29, 1990, the petitioner may elect to withdraw such petition, and have the application for naturalization considered under the administrative naturalization process. Such petition must be withdrawn after October 1, 1991, but not later than December 31, 1991.

(2) Except as provided in paragraph (b)(1) of this section, the petitioner shall not be permitted to withdraw his or her petition for naturalization, unless the Attorney General consents to the withdrawal.

(c) *Judicial proceedings.* (1) All pending petitions not withdrawn in the manner and terms described in paragraph (b) of this section, shall be decided, on the merits, by the naturalization court, in conformity with the applicable provisions of the judicial naturalization authority of the prior statute. The reviewing court shall enter a final order.

(2) In cases where the petitioner fails to prosecute his or her petition, the court shall decide the petition upon its merits unless the Attorney General moves that the petition be dismissed for lack of prosecution.

### § 310.5 Judicial review.

(a) *After 120 days following examination.* An applicant for naturalization may seek judicial review of a pending application for naturalization in those instances where the Service fails to make a determination under section 335 of the Act within 120 days after an examination is conducted under part 335 of this chapter. An applicant shall make a proper application for relief to the United States District Court having jurisdiction over the district in which the applicant resides. The court may either determine the issues brought before it on their merits, or remand the matter to the Service with appropriate instructions.

(b) *After denial of an application.* After an application for naturalization is denied following a hearing before a Service officer pursuant to section 336(a) of the Act, the applicant may seek judicial review of the decision pursuant to section 310 of the Act.

## PART 312—EDUCATIONAL REQUIREMENTS FOR NATURALIZATION

Sec.

312.1 Literacy requirements.

312.2 Knowledge of history and government of the United States.

312.3 Testing of applicants who obtained permanent residence pursuant to section 245A of the Act.

312.4 Selection of interpreter.

312.5 Failure to meet educational and literacy requirements.

AUTHORITY: 8 U.S.C. 1103, 1423, 1443, 1447, 1448.

SOURCE: 56 FR 50481, Oct. 7, 1991, unless otherwise noted.

### § 312.1 Literacy requirements.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, no person shall be naturalized as a citizen of the United States upon his or her own application unless that person can demonstrate an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language.

(b) *Exceptions.* The following persons need not demonstrate an ability to read, write and speak words in ordinary usage in the English language:

(1) A person who, on the date of filing of his or her application for naturalization, is over 50 years of age and has been living in the United States for periods totalling at least 20 years subsequent to a lawful admission for permanent residence;

(2) A person who, on the date of filing his or her application for naturalization, is over 55 years of age and has been living in the United States for periods totalling at least 15 years subsequent to a lawful admission for permanent residence; or

(3) The requirements of paragraph(a) of this section shall not apply to any person who is unable, because of a

medically determinable physical or mental impairment or combination of impairments which has lasted or is expected to last at least 12 months, to demonstrate an understanding of the English language as noted in paragraph (a) of this section. The loss of any cognitive abilities based on the direct effects of the illegal use of drugs will not be considered in determining whether a person is unable to demonstrate an understanding of the English language. For purposes of this paragraph, the term *medically determinable* means an impairment that results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical or laboratory diagnostic techniques to have resulted in functioning so impaired as to render an individual unable to demonstrate an understanding of the English language as required by this section, or that renders the individual unable to fulfill the requirements for English proficiency, even with reasonable modifications to the methods of determining English proficiency, as outlined in paragraph(c) of this section.

(c) *Literacy examination.* (1) *Verbal skills.* The ability of an applicant to speak English will be determined by a designated immigration officer from the applicant's answers to questions normally asked in the course of the examination.

(2) *Reading and writing skills.* Except as noted in 8 CFR 312.3, an applicant's ability to read and write English must be tested in a manner prescribed by USCIS. USCIS will provide a description of test study materials and testing procedures on the USCIS Internet Web site.

[56 FR 50481, Oct. 7, 1991, as amended at 62 FR 12923, Mar. 19, 1997; 62 FR 15751, Apr. 2, 1997; 64 FR 7993, Feb. 18, 1999; 76 FR 53797, Aug. 29, 2011]

### § 312.2 Knowledge of history and government of the United States.

(a) *General.* No person shall be naturalized as a citizen of the United States upon his or her own application unless that person can demonstrate a knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of

the United States. A person who is exempt from the literacy requirement under § 312.1(b) (1) and (2) must still satisfy this requirement.

(b) *Exceptions.* (1) The requirements of paragraph (a) of this section shall not apply to any person who is unable to demonstrate a knowledge and understanding of the fundamentals of the history, and of the principles and form of government of the United States because of a medically determinable physical or mental impairment, that already has or is expected to last at least 12 months. The loss of any cognitive skills based on the direct effects of the illegal use of drugs will not be considered in determining whether an individual may be exempted. For the purposes of this paragraph the term *medically determinable* means an impairment that results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical or laboratory diagnosis techniques to have resulted in functioning so impaired as to render an individual to be unable to demonstrate the knowledge required by this section or that renders the individuals unable to participate in the testing procedures for naturalization, even with reasonable modifications.

(2) *Medical certification.* All persons applying for naturalization and seeking an exception from the requirements of § 312.1(a) and paragraph (a) of this section based on the disability exceptions must submit Form N-648, Medical Certification for Disability Exceptions, to be completed by a medical or osteopathic doctor licensed to practice medicine in the United States or a clinical psychologist licensed to practice psychology in the United States (including the United States territories of Guam, Puerto Rico, and the Virgin Islands). Form N-648 must be submitted as an attachment to the applicant's Form N-400, Application for Naturalization. These medical professionals shall be experienced in diagnosing those with physical or mental medically determinable impairments and shall be able to attest to the origin, nature, and extent of the medical condition as it relates to the disability exceptions noted under § 312.1(b)(3) and paragraph (b)(1) of this section. In addition, the medical

professionals making the disability determination must sign a statement on the Form N-648 that they have answered all the questions in a complete and truthful manner, that they (and the applicant) agree to the release of all medical records relating to the applicant that may be requested by the Service and that they attest that any knowingly false or misleading statements may subject the medical professional to the penalties for perjury pursuant to title 18, United States Code, Section 1546 and to civil penalties under section 274C of the Act. The Service also reserves the right to refer the applicant to another authorized medical source for a supplemental disability determination. This option shall be invoked when the Service has credible doubts about the veracity of a medical certification that has been presented by the applicant. An affidavit or attestation by the applicant, his or her relatives, or guardian on his or her medical condition is not a sufficient medical attestation for purposes of satisfying this requirement.

(c) *History and government examination.*—(1) *Procedure.* The examination of an applicant's knowledge of the history and form of government of the United States must be given orally in English by a designated immigration officer, except:

(i) If the applicant is exempt from the English literacy requirement under 8 CFR 312.1(b), the examination may be conducted in the applicant's native language with the assistance of an interpreter selected in accordance with 8 CFR 312.4 but only if the applicant's command of spoken English is insufficient to conduct a valid examination in English;

(ii) The examination may be conducted in the applicant's native language, with the assistance of an interpreter selected in accordance with 8 CFR 312.4, if the applicant is required to satisfy and has satisfied the English literacy requirement under 8 CFR 312.1(a), but the officer conducting the examination determines that an inaccurate or incomplete record of the examination would result if the examination on technical or complex issues were conducted in English, or

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(iii) The applicant has met the requirements of 8 CFR 312.3.

(2) *Scope and substance.* The scope of the examination will be limited to subject matters prescribed by USCIS. In choosing the subject matters, in phrasing questions and in evaluating responses, due consideration must be given to the applicant's:

- (i) Education,
- (ii) Background,
- (iii) Age,
- (iv) Length of residence in the United States,
- (v) Opportunities available and efforts made to acquire the requisite knowledge, and
- (vi) Any other elements or factors relevant to an appraisal of the adequacy of the applicant's knowledge and understanding.

(Approved by the Office of Management and Budget under control number 1115-0208)

[56 FR 50481, Oct. 7, 1991, as amended at 58 FR 49912, Sept. 24, 1993; 62 FR 12923, Mar. 19, 1997; 62 FR 15751, Apr. 2, 1997; 64 FR 7993, Feb. 18, 1999; 76 FR 53797, Aug. 29, 2011]

### § 312.3 Testing of applicants who obtained permanent residence pursuant to section 245A of the Act.

An applicant who has obtained lawful permanent resident alien status pursuant to section 245A of the Act, and who, at that time, demonstrated English language proficiency in reading and writing, and knowledge of the government and history of the United States through either an examination administered by USCIS or the INS or a standardized section 312 test authorized by the USCIS or the INS for use with Legalization applicants as provided in section 245A(b)(1)(D)(iii) of the Act, will not be reexamined on those skills at the time of the naturalization interview. However, such applicant, unless otherwise exempt, must still demonstrate his or her ability to speak and understand English in accordance with 8 CFR 312.1(c)(1) and establish eligibility for naturalization through testimony in the English language.

[76 FR 53798, Aug. 29, 2011]

### § 312.4 Selection of interpreter.

An interpreter to be used under § 312.2 may be selected either by the applicant or by the Service. However, the Service

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reserves the right to disqualify an interpreter provided by the applicant in order to ensure the integrity of the examination. Where the Service disqualifies an interpreter, the Service must provide another interpreter for the applicant in a timely manner. If rescheduling of the interview is required, then a new date shall be set as soon as practicable so as not to delay unduly the adjudication of the application. The officer who disqualifies an interpreter shall make a written record of the reason(s) for disqualification as part of the record of the application.

[60 FR 6651, Feb. 3, 1995]

### § 312.5 Failure to meet educational and literacy requirements.

(a) An applicant for naturalization who fails the English literacy or history and government test at the first examination will be afforded a second opportunity to pass the test(s) within 90 days after the first examination during the pendency of the application.

(b) If an applicant who receives notice of the second scheduled examination date fails to appear without good cause for that second examination without prior notification to the Service, the applicant will be deemed to have failed this second examination. Before an applicant may request a postponement of the second examination to a date that is more than 90 days after the initial examination, the applicant must agree in writing to waive the requirement under section 336 of the Act that the Service must render a determination on the application within 120 days from the initial interview, and instead to permit the Service to render a decision within 120 days from the second interview.

[56 FR 50481, Oct. 7, 1991, as amended at 58 FR 49912, Sept. 24, 1993]

## PART 313—MEMBERSHIP IN THE COMMUNIST PARTY OR ANY OTHER TOTALITARIAN ORGANIZATIONS

Sec.

313.1 Definitions.

313.2 Prohibitions.

313.3 Statutory exemptions.

313.4 Procedure.

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## § 313.1

AUTHORITY: 8 U.S.C. 1103, 1424, 1443.

SOURCE: 56 FR 50482, Oct. 7, 1991, unless otherwise noted.

### § 313.1 Definitions.

For purposes of this part:

*Advocate* includes, but is not limited to, advising, recommending, furthering by overt act, or admitting a belief in a doctrine, and may include the giving, lending, or promising of support or of money or any thing of value to be used for advocating such doctrine.

*Advocating Communism* means advocating the establishment of a totalitarian communist dictatorship, including the economic, international, and governmental doctrines of world communism, in all countries of the world through the medium of an internationally coordinated communist revolutionary movement.

*Affiliation* with an organization includes, but is not limited to, the giving, lending, or promising of support or of money or any thing of value, to that organization to be used for any purpose.

*Circulate* includes circulating, distributing, or displaying a work.

*Communist Party* includes:

(1) The Communist Party of the United States;

(2) The Communist Political Association;

(3) The Communist Party of any state of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state;

(4) Any section, subsidiary, branch, affiliate, or subdivision of any such association or party;

(5) The direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt; and

(6) Any communist-action or communist-front organization that is registered or required to be registered under section 786 of title 50 of the United States Code, provided that the applicant knew or had reason to believe, while he or she was a member, that such organization was a communist-front organization.

*Organization* includes, but is not limited to, an organization, corporation,

company, partnership, association, trust, foundation, or fund, and any group of persons, whether incorporated or not, permanently or temporarily associated together for joint action on any subject or subjects.

*Publication* or *publishing* of a work includes writing or printing a work; permitting, authorizing, or consenting to the writing or printing of a work; and paying for the writing or printing of a work.

*Subversive* is any individual who advocates or teaches:

(1) Opposition to all organized government;

(2) The overthrow, by force or violence or other unconstitutional means, of the Government of the United States or of all forms of law;

(3) The duty, necessity, or propriety of the unlawful assaulting or killing, either individually or by position, of any officer or officers of the United States or of any other organized government, because of his, her, or their official character;

(4) The unlawful damage, injury, or destruction of property; or

(5) Sabotage.

*Totalitarian dictatorship* and *totalitarianism* refer to systems of government not representative in fact and characterized by:

(1) The existence of a single political party, organized on a dictatorial basis, with so close an identity between the policies of such party and the government policies of the country in which the party exists that the government and the party constitute an indistinguishable unit; and

(2) The forcible suppression of all opposition to such a party.

*Totalitarian party* includes:

(1) Any party in the United States which advocates totalitarianism;

(2) Any party in any State of the United States, in any foreign state, or in any political or geographical subdivision of any foreign state which advocates or practices totalitarianism;

(3) Any section, subsidiary, branch, affiliate, or subdivision of any such association or party; and

(4) The direct predecessors or successors of any such association or party, regardless of what name such group or

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organization may have used, may now bear, or may hereafter adopt.

[56 FR 50482, Oct. 7, 1991, as amended at 58 FR 49912, Sept. 24, 1993]

### § 313.2 Prohibitions.

Except as provided in § 313.3, no applicant for naturalization shall be naturalized as a citizen of the United States if, within ten years immediately preceding the filing of an application for naturalization or after such filing but before taking the oath of citizenship, such applicant:

(a) Is or has been a member of or affiliated with the Communist Party or any other totalitarian party; or

(b) Is or has advocated communism or the establishment in the United States of a totalitarian dictatorship; or

(c) Is or has been a member of or affiliated with an organization that advocates communism or the establishment in the United States of a totalitarian dictatorship, either through its own utterance or through any written or printed matter published by such organization; or

(d) Is or has been a subversive, or a member of, or affiliated with, a subversive organization; or

(e) Knowingly is publishing or has published any subversive written or printed matter, or written or printed matter advocating communism; or

(f) Knowingly circulates or has circulated, or knowingly possesses or has possessed for the purpose of circulating, subversive written or printed matter, or written or printed matter advocating communism; or

(g) Is or has been a member of, or affiliated with, any organization that publishes or circulates, or that possesses for the purpose of publishing or circulating, any subversive written or printed matter, or any written or printed matter advocating communism.

### § 313.3 Statutory exemptions.

(a) *General.* An applicant shall bear the burden of establishing that classification in one of the categories listed under § 313.2 is not a bar to naturalization.

(b) *Exemptions.* Despite membership in or affiliation with an organization covered by § 313.2, an applicant may be

naturalized if the applicant establishes that such membership or affiliation is or was:

(1) Involuntary;

(2) Without awareness of the nature or the aims of the organization, and was discontinued if the applicant became aware of the nature or aims of the organization;

(3) Terminated prior to the attainment of age sixteen by the applicant, or more than ten years prior to the filing of the application for naturalization;

(4) By operation of law; or

(5) Necessary for purposes of obtaining employment, food rations, or other essentials of living.

(c) *Awareness and participation—(1) Exemption applicable.* The exemption under paragraph (b)(2) of this section may be found to apply only to an applicant whose participation in the activities of an organization covered under § 313.2 was minimal in nature, and who establishes that he or she was unaware of the nature of the organization while a member of the organization.

(2) *Exemptions inapplicable.* The exemptions under paragraphs (b)(4) and (b)(5) of this section will not apply to any applicant who served as a functionary of an organization covered under § 313.2, or who was aware of and believed in the organization's doctrines.

(d) *Essentials of living—(1) Exemption applicable.* The exemption under paragraph (b)(5) of this section may be found to apply only to an applicant who can demonstrate:

(i) That membership in the covered organization was necessary to obtain the essentials of living like food, shelter, clothing, employment, and an education, which were routinely available to the rest of the population—for purposes of this exemption, higher education will qualify as an essential of living only if the applicant can establish the existence of special circumstances which convert the need for higher education into a need as basic as the need for food or employment; and,

(ii) That he or she participated only to the minimal extent necessary to receive the essential of living.



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(2) *Exemption inapplicable.* The exemption under paragraph (b)(5) of this section will not be applicable to an applicant who became a member of an organization covered under 313.2 to receive certain benefits:

- (i) Without compulsion from the governing body of the relevant country; or
- (ii) Which did not qualify as essentials of living.

### §313.4 Procedure.

In all cases in which the applicant claims membership or affiliation in any of the organizations covered by §313.2, the applicant shall attach to the application a detailed written statement describing such membership or affiliation, including the periods of membership or affiliation, whether the applicant held any office in the organization, and whether membership or affiliation was voluntary or involuntary. If the applicant alleges that membership or affiliation was involuntary, or that one of the other exemptions in §313.3 applies, the applicant's statement shall set forth the basis of that allegation.

## PART 315—PERSONS INELIGIBLE TO CITIZENSHIP: EXEMPTION FROM MILITARY SERVICE

Sec.

315.1 Definitions.

315.2 Ineligibility and exceptions.

315.3 Evidence.

315.4 Exemption treaties.

AUTHORITY: 8 U.S.C. 1103, 1443.

SOURCE: 56 FR 50483, Oct. 7, 1991, unless otherwise noted.

### §315.1 Definitions.

As used in this part:

*Exemption from military service* means either:

(1) A permanent exemption from induction into the Armed Forces or the National Security Training Corps of the United States for military training or military service; or

(2) The release or discharge from military training or military service in the Armed Forces or in the National Security Training Corps of the United States.

*Induction* means compulsory entrance into military service of the United

States whether by conscription or, after being notified of a pending conscription, by enlistment.

*Treaty national* means an alien who is a national of a country with which the United States has a treaty relating to the reciprocal exemption of aliens from military training or military service.

### §315.2 Ineligibility and exceptions.

(a) *Ineligibility.* Except as provided in paragraph (b) of this section, any alien who has requested, applied for, and obtained an exemption from military service on the ground that he or she is an alien shall be ineligible for approval of his or her application for naturalization as a citizen of the United States.

(b) *Exceptions.* The prohibition in paragraph (a) of this section does not apply to an alien who establishes by clear and convincing evidence that:

(1) At the time that he or she requested an exemption from military service, the applicant had no liability for such service even in the absence of an exemption;

(2) The applicant did not request or apply for the exemption from military service, but such exemption was automatically granted by the United States government;

(3) The exemption from military service was based upon a ground other than the applicant's alienage;

(4) In claiming an exemption from military service, the applicant did not knowingly and intentionally waive his or her eligibility for naturalization because he or she was misled by advice from a competent United States government authority, or from a competent authority of the government of his or her country of nationality, of the consequences of applying for an exemption from military service and was, therefore, unable to make an intelligent choice between exemption and citizenship;

(5) The applicant applied for and received an exemption from military service on the basis of alienage, but was subsequently inducted into the Armed Forces, or the National Security Training Corps, of the United States; however, an applicant who voluntarily enlists in and serves in the Armed Forces of the United States,

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after applying for and receiving an exemption from military service on the basis of alienage, does not satisfy this exception to paragraph (a) of this section;

(6) Prior to requesting the exemption from military service:

(i) The applicant was a treaty national who had served in the armed forces of the country of which he or she was a national; however, a treaty national who did not serve in the armed forces of the country of nationality prior to requesting the exemption from military service does not satisfy this exception to paragraph (a) of this section;

(ii) The applicant served a minimum of eighteen months in the armed forces of a nation that was a member of the North Atlantic Treaty Organization at the time of the applicant's service; or

(iii) The applicant served a minimum of twelve months in the armed forces of a nation that was a member of the North Atlantic Treaty Organization at the time of the applicant's service, provided that the applicant applied for registration with the Selective Service Administration after September 28, 1971; or

(7) The applicant is applying for naturalization pursuant to section 329 of the Act.

### § 315.3 Evidence.

(a) The records of the Selective Service System and the military department under which the alien served shall be conclusive evidence of whether the alien was relieved or discharged from liability for military service because he or she was an alien.

(b) The regulations of the Selective Service Administration and its predecessors will be controlling with respect to the requirement to register for, and liability for, service in the Armed Forces of the United States.

### § 315.4 Exemption treaties.

(a) The following countries currently have effective treaties providing reciprocal exemption of aliens from military service:

Argentina (Art. X, 10 Stat. 1005, 1009, effective 1853)  
Austria (Art. VI, 47 Stat. 1876, 1880, effective 1928)

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China (Art. XIV, 63 Stat. 1299, 1311, effective 1946)

Costa Rica (Art. IX, 10 Stat. 916, 921, effective 1851)

Estonia (Art. VI, 44 Stat. 2379, 2381, effective 1925)

Honduras (Art. VI, 45 Stat. 2618, 2622, effective 1927)

Ireland (Art. III, 1 US 785, 789, effective 1950)

Italy (Art. XIII, 63 Stat. 2255, 2272, effective 1948)

Latvia (Art. VI, 45 Stat. 2641, 2643, effective 1928)

Liberia (Art. VI, 54 Stat. 1739, 1742, effective 1938)

Norway (Art. VI, 47 Stat. 2135, 2139, effective 1928)

Paraguay (Art. XI, 12 Stat. 1091, 1096, effective 1859)

Spain (Art. V, 33 Stat. 2105, 2108, effective 1902)

Switzerland (Art. II, 11 Stat. 587, 589, effective 1850)

Yugoslavia (Serbia) (Art. IV, 22 Stat. 963, 964, effective 1881)

(b) The following countries previously had treaties providing for reciprocal exemption of aliens from military service:

El Salvador (Art. VI, 46 Stat. 2817, 2821, effective 1926 to February 8, 1958)

Germany (Art. VI, 44 Stat. 2132, 2136, effective 1923 to June 2, 1954)

Hungary (Art. VI, 44 Stat. 2441, 2445, effective 1925 to July 5, 1952)

Thailand (Siam) (Art. 1, 53 Stat. 1731, 1732, effective 1937 to June 8, 1968)

## PART 316—GENERAL REQUIREMENTS FOR NATURALIZATION

### Sec.

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AUTHORITY: 8 U.S.C. 1103, 1181, 1182, 1443, 1447; 8 CFR part 2.

SOURCE: 56 FR 50484, Oct. 7, 1991, unless otherwise noted.

### §316.1 Definitions.

As used in this part, the term:

*Application* means any form, as defined in 8 CFR part 1, on which an applicant requests a benefit relating to naturalization.

*Residence in the Service district where the application is filed* means residence in the geographical area over which a particular local field office of USCIS ordinarily has jurisdiction for purposes of naturalization, regardless of where or how USCIS may require such benefit request to be submitted, or whether jurisdiction for the purpose of adjudication is relocated or internally reassigned to another USCIS office.

*Service district* means the geographical area over which a particular local field office of USCIS ordinarily has jurisdiction for purposes of naturalization.

[76 FR 53798, Aug. 29, 2011]

### §316.2 Eligibility.

(a) *General.* Except as otherwise provided in this chapter, to be eligible for naturalization, an alien must establish that he or she:

(1) Is at least 18 years of age;

(2) Has been lawfully admitted as a permanent resident of the United States;

(3) Has resided continuously within the United States, as defined under §316.5, for a period of at least five years after having been lawfully admitted for permanent residence;

(4) Has been physically present in the United States for at least 30 months of the five years preceding the date of filing the application;

(5) Immediately preceding the filing of an application, or immediately preceding the examination on the application if the application was filed early pursuant to section 334(a) of the Act and the three month period falls within the required period of residence under section 316(a) or 319(a) of the Act, has resided, as defined under §316.5, for at least three months in a State or Service district having jurisdiction over the applicant's actual place of residence;

(6) Has resided continuously within the United States from the date of application for naturalization up to the time of admission to citizenship;

(7) For all relevant time periods under this paragraph, has been and continues to be a person of good moral character, attached to the principles of the Constitution of the United States, and favorably disposed toward the good order and happiness of the United States; and

(8) Is not a person described in Section 314 of the Act relating to deserters of the United States Armed Forces or those persons who departed from the United States to evade military service in the United States Armed Forces.

(b) *Burden of proof.* The applicant shall bear the burden of establishing by a preponderance of the evidence that he or she meets all of the requirements for naturalization, including that the applicant was lawfully admitted as a permanent resident to the United States, in accordance with the immigration laws in effect at the time of the applicant's initial entry or any subsequent reentry.

[56 FR 50484, Oct. 7, 1991, as amended at 58 FR 49912, Sept. 24, 1993; 60 FR 6651, Feb. 3, 1995; 76 FR 53798, Aug. 29, 2011]

### §316.3 [Reserved]

### §316.4 Application; documents.

(a) The applicant will apply for naturalization in accordance with instructions provided on the form prescribed by USCIS for that purpose.

(b) At the time of the examination on the application for naturalization, the applicant may be required to establish the status of lawful permanent resident by submitting the original evidence, issued by the Service, of lawful permanent residence in the United States. The applicant may be also required to submit any passports, or any other documents that have been used to enter the United States at any time after the original admission for permanent residence.

[56 FR 50484, Oct. 7, 1991, as amended at 58 FR 48780, Sept. 20, 1993; 63 FR 12987, Mar. 17, 1998; 63 FR 70316, Dec. 21, 1998; 76 FR 53798, Aug. 29, 2011]

**§ 316.5 Residence in the United States.**

(a) *General.* Unless otherwise specified, for purposes of this chapter, including § 316.2 (a)(3), (a)(5), and (a)(6), an alien's residence is the same as that alien's domicile, or principal actual dwelling place, without regard to the alien's intent, and the duration of an alien's residence in a particular location is measured from the moment the alien first establishes residence in that location.

(b) *Residences in specific cases—(1) Military personnel.* For applicants who are serving in the Armed Forces of the United States but who do not qualify for naturalization under part 328 of this chapter, the applicant's residence shall be:

(i) The State or Service District where the applicant is physically present for at least three months, immediately preceding the filing of an application for naturalization, or immediately preceding the examination on the application if the application was filed early pursuant to section 334(a) of the Act and the three month period falls within the required period of residence under section 316(a) or 319(a) of the Act;

(ii) The location of the residence of the applicant's spouse and/or minor child(ren); or

(iii) The applicant's home of record as declared to the Armed Forces at the time of enlistment and as currently reflected in the applicant's military personnel file.

(2) *Students.* An applicant who is attending an educational institution in a State or Service District other than the applicant's home residence may apply for naturalization:

(i) Where that institution is located; or

(ii) In the State of the applicant's home residence if the applicant can establish that he or she is financially dependent upon his or her parents at the time that the application is filed and during the naturalization process.

(3) *Commuter aliens.* An applicant who is a commuter alien, as described in § 211.5 of this chapter, must establish a principal dwelling place in the United States with the intention of permanently residing there, and must thereafter acquire the requisite period of

residence before eligibility for naturalization may be established. Accordingly, a commuter resident alien may not apply for naturalization until he or she has actually taken up permanent residence in the United States and until such residence has continued for the required statutory period. Such an applicant bears the burden of providing evidence to that effect.

(4) *Residence in multiple states.* If an applicant claims residence in more than one State, the residence for purposes of this part shall be determined by reference to the location from which the annual federal income tax returns have been and are being filed.

(5) *Residence during absences of less than one year.* (i) An applicant's residence during any absence of less than one year shall continue to be the State or Service district where the applicant last resided at the time of the applicant's departure abroad.

(ii) *Return to the United States.* If, upon returning to the United States, an applicant returns to the State or Service district where the applicant last resided, the applicant will have complied with the continuous residence requirement specified in § 316.2(a)(5) when at least three months have elapsed, including any part of the applicant's absence, from the date on which the applicant first established that residence. If the applicant establishes residence in a State or Service district other than the one in which he or she last resided, the applicant must complete three months at that new residence to be eligible for naturalization.

(6) *Spouse of military personnel.* Pursuant to section 319(e) of the Act, any period of time the spouse of a United States citizen resides abroad will be treated as residence in any State or district of the United States for purposes of naturalization under section 316(a) or 319(a) of the Act if, during the period of time abroad, the applicant establishes that he or she was:

(i) The spouse of a member of the Armed Forces;

(ii) Authorized to accompany and reside abroad with that member of the Armed Forces pursuant to the member's official orders; and

(iii) Accompanying and residing abroad with that member of the Armed

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Forces in marital union in accordance with 8 CFR 319.1(b).

(c) *Disruption of continuity of residence*—(1) *Absence from the United States*—(i) *For continuous periods of between six (6) months and one (1) year.* Absences from the United States for continuous periods of between six (6) months and one (1) year during the periods for which continuous residence is required under §316.2 (a)(3) and (a)(6) shall disrupt the continuity of such residence for purposes of this part unless the applicant can establish otherwise to the satisfaction of the Service. This finding remains valid even if the applicant did not apply for or otherwise request a nonresident classification for tax purposes, did not document an abandonment of lawful permanent resident status, and is still considered a lawful permanent resident under immigration laws. The types of documentation which may establish that the applicant did not disrupt the continuity of his or her residence in the United States during an extended absence include, but are not limited to, evidence that during the absence:

(A) The applicant did not terminate his or her employment in the United States;

(B) The applicant's immediate family remained in the United States;

(C) The applicant retained full access to his or her United States abode; or

(D) The applicant did not obtain employment while abroad.

(ii) *For period in excess of one (1) year.* Unless an applicant applies for benefits in accordance with §316.5(d), absences from the United States for a continuous period of one (1) year or more during the period for which continuous residence is required under §316.2 (a)(3) and (a)(5) shall disrupt the continuity of the applicant's residence. An applicant described in this paragraph who must satisfy a five-year statutory residence period may file an application for naturalization four years and one day following the date of the applicant's return to the United States to resume permanent residence. An applicant described in this paragraph who must satisfy a three-year statutory residence period may file an application for naturalization two years and one day following the date of the appli-

cant's return to the United States to resume permanent residence.

(2) *Claim of nonresident alien status for income tax purposes after lawful admission as a permanent resident.* An applicant who is a lawfully admitted permanent resident of the United States, but who voluntarily claims nonresident alien status to qualify for special exemptions from income tax liability, or fails to file either federal or state income tax returns because he or she considers himself or herself to be a nonresident alien, raises a rebuttable presumption that the applicant has relinquished the privileges of permanent resident status in the United States.

(3) *Removal and return.* Any departure from the United States while under an order of removal (including previously issued orders of exclusion or deportation) terminates the applicant's status as a lawful permanent resident and, therefore, disrupts the continuity of residence for purposes of this part.

(4) *Readmission after a deferred inspection or exclusion proceeding.* An applicant who has been readmitted as a lawful permanent resident after a deferred inspection or by the immigration judge during exclusion proceedings shall satisfy the residence and physical presence requirements under §316.2 (a)(3), (a)(4), (a)(5), and (a)(6) in the same manner as any other applicant for naturalization.

(d) *Application for benefits with respect to absences; appeal*—(1) *Preservation of residence under section 316(b) of the Act.*

(i) An application for the residence benefits under section 316(b) of the Act to cover an absence from the United States for a continuous period of one year or more shall be submitted to the Service on Form N-470 with the required fee, in accordance with the form's instructions. The application may be filed either before or after the applicant's employment commences, but must be filed before the applicant has been absent from the United States for a continuous period of one year.

(ii) An approval of Form N-470 under section 316(b) of the Act shall cover the spouse and dependent unmarried sons and daughters of the applicant who are residing abroad as members of the applicant's household during the period covered by the application. The notice

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of approval, Form N-472, shall identify the family members so covered.

(iii) An applicant whose Form N-470 application under section 316(b) of the Act has been approved, but who voluntarily claims nonresident alien status to qualify for special exemptions from income tax liability, raises a rebuttable presumption that the applicant has relinquished a claim of having retained lawful permanent resident status while abroad. The applicant's family members who were covered under section 316(b) of the Act and who were listed on the applicant's Form N-472 will also be subject to the rebuttable presumption that they have relinquished their claims to lawful permanent resident status.

(2) *Preservation of residence under section 317 of the Act.* An application for the residence and physical presence benefits of section 317 of the Act to cover any absences from the United States, whether before or after December 24, 1952, shall be submitted to the Service on Form N-470 with the required fee, in accordance with the form's instructions. The application may be filed either before or after the applicant's absence from the United States or the performance of the functions or services described in section 317 of the Act.

(3) *Approval, denial, and appeal.* The applicant under paragraphs (d)(1) or (d)(2) of this section shall be notified of the Service's disposition of the application on Form N-472. If the application is denied, the Service shall specify the reasons for the denial, and shall inform the applicant of the right to appeal in accordance with the provisions of part 103 of this chapter.

[56 FR 50484, Oct. 7, 1991, as amended at 56 FR 50487, Oct. 7, 1991; 58 FR 49913, Sept. 24, 1993; 60 FR 6651, Feb. 3, 1995; 62 FR 10394, Mar. 6, 1997; 76 FR 53798, Aug. 29, 2011]

## § 316.6 Physical presence for certain spouses of military personnel.

Pursuant to section 319(e) of the Act, any period of time the spouse of a United States citizen resides abroad will be treated as physical presence in any State or district of the United States for purposes of naturalization under section 316(a) or 319(a) of the Act if, during the period of time abroad,

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the applicant establishes that he or she was:

(a) The spouse of a member of the Armed Forces;

(b) Authorized to accompany and reside abroad with that member of the Armed Forces pursuant to the member's official orders; and

(c) Accompanying and residing abroad with that member of the Armed Forces in marital union in accordance with 8 CFR 319.1(b).

[76 FR 53798, Aug. 29, 2011]

## §§ 316.7-316.9 [Reserved]

## § 316.10 Good moral character.

(a) *Requirement of good moral character during the statutory period.* (1) An applicant for naturalization bears the burden of demonstrating that, during the statutorily prescribed period, he or she has been and continues to be a person of good moral character. This includes the period between the examination and the administration of the oath of allegiance.

(2) In accordance with section 101(f) of the Act, the Service shall evaluate claims of good moral character on a case-by-case basis taking into account the elements enumerated in this section and the standards of the average citizen in the community of residence. The Service is not limited to reviewing the applicant's conduct during the five years immediately preceding the filing of the application, but may take into consideration, as a basis for its determination, the applicant's conduct and acts at any time prior to that period, if the conduct of the applicant during the statutory period does not reflect that there has been reform of character from an earlier period or if the earlier conduct and acts appear relevant to a determination of the applicant's present moral character.

(b) *Finding of a lack of good moral character.* (1) An applicant shall be found to lack good moral character, if the applicant has been:

(i) Convicted of murder at any time; or

(ii) Convicted of an aggravated felony as defined in section 101(a)(43) of the Act on or after November 29, 1990.

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(2) An applicant shall be found to lack good moral character if during the statutory period the applicant:

(i) Committed one or more crimes involving moral turpitude, other than a purely political offense, for which the applicant was convicted, except as specified in section 212(a)(2)(ii)(II) of the Act;

(ii) Committed two or more offenses for which the applicant was convicted and the aggregate sentence actually imposed was five years or more, provided that, if the offense was committed outside the United States, it was not a purely political offense;

(iii) Violated any law of the United States, any State, or any foreign country relating to a controlled substance, provided that the violation was not a single offense for simple possession of 30 grams or less of marijuana;

(iv) Admits committing any criminal act covered by paragraphs (b)(2) (i), (ii), or (iii) of this section for which there was never a formal charge, indictment, arrest, or conviction, whether committed in the United States or any other country;

(v) Is or was confined to a penal institution for an aggregate of 180 days pursuant to a conviction or convictions (provided that such confinement was not outside the United States due to a conviction outside the United States for a purely political offense);

(vi) Has given false testimony to obtain any benefit from the Act, if the testimony was made under oath or affirmation and with an intent to obtain an immigration benefit; this prohibition applies regardless of whether the information provided in the false testimony was material, in the sense that if given truthfully it would have rendered ineligible for benefits either the applicant or the person on whose behalf the applicant sought the benefit;

(vii) Is or was involved in prostitution or commercialized vice as described in section 212(a)(2)(D) of the Act;

(viii) Is or was involved in the smuggling of a person or persons into the United States as described in section 212(a)(6)(E) of the Act;

(ix) Has practiced or is practicing polygamy;

(x) Committed two or more gambling offenses for which the applicant was convicted;

(xi) Earns his or her income principally from illegal gambling activities; or

(xii) Is or was a habitual drunkard.

(3) Unless the applicant establishes extenuating circumstances, the applicant shall be found to lack good moral character if, during the statutory period, the applicant:

(i) Willfully failed or refused to support dependents;

(ii) Had an extramarital affair which tended to destroy an existing marriage; or

(iii) Committed unlawful acts that adversely reflect upon the applicant's moral character, or was convicted or imprisoned for such acts, although the acts do not fall within the purview of §316.10(b) (1) or (2).

(c) *Proof of good moral character in certain cases—*(1) *Effect of probation or parole.* An applicant who has been on probation, parole, or suspended sentence during all or part of the statutory period is not thereby precluded from establishing good moral character, but such probation, parole, or suspended sentence may be considered by the Service in determining good moral character. An application will not be approved until after the probation, parole, or suspended sentence has been completed.

(2) *Full and unconditional executive pardon—*(i) *Before the statutory period.* An applicant who has received a full and unconditional executive pardon prior to the beginning of the statutory period is not precluded by §316.10(b)(1) from establishing good moral character provided the applicant demonstrates that reformation and rehabilitation occurred prior to the beginning of the statutory period.

(ii) *During the statutory period.* An applicant who receives a full and unconditional executive pardon during the statutory period is not precluded by §316.10(b)(2) (i) and (ii) from establishing good moral character, provided the applicant can demonstrate that extenuating and/or exonerating circumstances exist that would establish his or her good moral character.

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(3) *Record expungement*—(i) *Drug offenses*. Where an applicant has had his or her record expunged relating to one of the narcotics offenses under section 212(a)(2)(A)(i)(II) and section 241(a)(2)(B) of the Act, that applicant shall be considered as having been “convicted” within the meaning of § 316.10(b)(2)(ii), or, if confined, as having been confined as a result of “conviction” for purposes of § 316.10(b)(2)(iv).

(ii) *Moral turpitude*. An applicant who has committed or admits the commission of two or more crimes involving moral turpitude during the statutory period is precluded from establishing good moral character, even though the conviction record of one such offense has been expunged.

[56 FR 50484, Oct. 7, 1991, as amended at 58 FR 49913, Sept. 24, 1993]

### § 316.11 Attachment to the Constitution; favorable disposition towards the good order and happiness.

(a) *General*. An applicant for naturalization must establish that during the statutorily prescribed period, he or she has been and continues to be attached to the principles of the Constitution of the United States and favorably disposed toward the good order and happiness of the United States. Attachment implies a depth of conviction which would lead to active support of the Constitution. Attachment and favorable disposition relate to mental attitude, and contemplate the exclusion from citizenship of applicants who are hostile to the basic form of government of the United States, or who disbelieve in the principles of the Constitution.

(b) *Advocacy of peaceful change*. At a minimum, the applicant shall satisfy the general standard of paragraph (a) of this section by demonstrating an acceptance of the democratic, representational process established by the Constitution, a willingness to obey the laws which may result from that process, and an understanding of the means for change which are prescribed by the Constitution. The right to work for political change shall be consistent with the standards in paragraph (a) of this section only if the changes advocated would not abrogate the current Gov-

ernment and establish an entirely different form of government.

(c) *Membership in the Communist Party or any other totalitarian organization*. An applicant who is or has been a member of or affiliated with the Communist Party or any other totalitarian organization shall be ineligible for naturalization, unless the applicant's membership meets the exceptions in sections 313 and 335 of the Act and § 313.4 of this chapter.

### § 316.12 Applicant's legal incompetency during statutory period.

(a) *General*. An applicant who is legally competent at the time of the examination on the naturalization application and of the administration of the oath of allegiance may be admitted to citizenship, provided that the applicant fully understands the purpose and responsibilities of the naturalization procedures.

(b) *Legal incompetence*. Naturalization is not precluded if, during part of the statutory period, the applicant was legally incompetent or confined to a mental institution.

(1) There is a presumption that the applicant's good moral character, attachment, and favorable disposition which existed prior to the period of legal incompetency continued through that period. The Service may, however, consider an applicant's actions during a period of legal incompetence, as evidence tending to rebut this presumption.

(2) If the applicant has been declared legally incompetent, the applicant has the burden of establishing that legal competency has been restored. The applicant shall submit legal and medical evidence to determine and establish the claim of legal competency.

(3) The applicant shall bear the burden of establishing that any crimes committed, regardless of whether the applicant was convicted, occurred while the applicant was declared legally incompetent.

### § 316.13 [Reserved]

### § 316.14 Adjudication—examination, grant, denial.

(a) *Examination*. The examination on an application for naturalization shall



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be conducted in accordance with Section 335 of the Act.

(b) *Determination*—(1) *Grant or denial*. Subject to supervisory review, the employee of the Service who conducts the examination under paragraph (a) of this section shall determine whether to grant or deny the application, and shall provide reasons for the determination, as required under section 335(d) of the Act.

(2) *Appeal*. An applicant whose application for naturalization has been denied may request a hearing, which shall be carried out in accordance with section 336 of the Act.

### §§ 316.15–316.19 [Reserved]

### § 316.20 American institutions of research, public international organizations, and designations under the International Immunities Act.

(a) *American institutions of research*. The following-listed organizations have been determined to be American Institutions of research recognized by the Attorney General:

African Medical and Research Foundation (AMREF-USA).  
Albert Einstein College of Medicine of Yeshiva University (only in relationship to its research programs).  
American Friends of the Middle East, Inc.  
American Institutes of Research in the Behavioral Sciences (only in relationship to research projects abroad).  
American Universities Field Staff, Inc.  
American University, The, Cairo, Egypt.  
American University of Beirut (Near East College Associations).  
Arctic Institute of North America, Inc.  
Armour Research Foundation of Illinois Institute of Technology.  
Asia Foundation, The (formerly Committee for a Free Asia, Inc.).  
Association of Universities for Research in Astronomy (AURA, Inc.), Tucson, AZ.  
Atomic Bomb Casualty Commission.  
Beirut University College.  
Bermuda Biological Station for Research, Inc.  
Bernice P. Bishop Museum of Polynesian Antiquities, Ethnology and Natural History at Honolulu, HI.  
Brookhaven National Laboratory, Associated Universities, Inc.  
Brown University (Department of Engineering), Providence, RI.  
Buffalo Eye Bank and Research Society, Inc.  
Burma Office of Robert N. Nathan Associates, Inc.

California State University at Long Beach, Department of Geological Sciences.  
Carleton College (Department of Sociology and Anthropology), Northfield, MN.  
Center of Alcohol Studies, Laboratory of Applied Biodynamics of Yale University.  
Central Registry of Jewish Losses in Egypt.  
College of Engineering, University of Wisconsin.  
College of Medicine, State University of New York.  
Colorado State University (Research Foundation), Fort Collins, CO.  
Colorado University (International Economic Studies Center), Boulder, CO.  
Columbia University (Parker School of Foreign and Comparative Law) and (Faculty of Pure Science), New York, NY.  
Cornell University (International Agricultural Development, University of the Philippines-Cornell University Graduate Education Program).  
Dartmouth Medical School.  
Department of French, Department of Scandinavian Languages, and Department of Near Eastern Languages of the University of California, Berkeley, CA.  
Duke University.  
Environmental Research Laboratory of the University of Arizona.  
Fletcher School of Law and Diplomacy, Medford, MA.  
Ford Foundation, 477 Madison Avenue, New York, NY.  
Free Europe, Inc. (formerly Free Europe Committee, Inc.; National Committee for a Free Europe (including Radio Free Europe)).  
Georgetown University.  
George Williams Hooper Foundation, San Francisco Medical Center, University of California, San Francisco, CA.  
Gorgas Memorial Institute of Tropical and Preventive Medicine, Inc., and its operating unit, the Gorgas Memorial Laboratory.  
Graduate Faculty of Political and Social Science Division of the New School for Social Research, New York, NY.  
Harvard University (research and educational programs only).  
Harvard-Yenching Institute.  
Humboldt State University, School of Natural Resources, Wildlife Management Department.  
Indiana University at Bloomington, Indianapolis, South Bend, Northwest, Kokomo, Southeast, East, and Fort Wayne  
Institute for Development Anthropology, Inc.  
Institute of International Education, Inc.  
Institute of International Studies, University of California, Berkeley, CA.  
International Center for Social Research, New York, NY.  
International Development Foundation, Inc.  
International Development Services, Inc.

International Research Associates, Inc.  
 Inter-University Program for Chinese Language Studies (formerly Stanford Center for Chinese Studies) in Taipei, Taiwan.  
 Iowa State University.  
 Iran Foundation, Inc., The.  
 Kossuth Foundation, Inc., The, New York, NY.  
 Louisiana State University.  
 Massachusetts Institute of Technology.  
 Michigan State University, East Lansing, MI.  
 Missouri Botanical Garden (research and educational programs only)  
 Natural Science Foundation, Philadelphia, PA.  
 New York Zoological Society.  
 Paderewski Foundation, Inc.  
 Peabody Museum of Natural History of Yale University.  
 People to People Health Foundation, Inc., The (only in relationship to the scientific research activities that will be carried on abroad by the medical staff of the SS “Hope”).  
 Pierce College (in relationship to research by an instructor, Department of Psychology), Athens, Greece.  
 Population Council, The, New York, NY.  
 Radio Liberty Committee, Inc. (formerly American Committee for Liberation, Inc.; American Committee for Liberation of the Peoples of Russia, Inc.; American Committee for Liberation from Bolshevism, Inc.).  
 Rockefeller Foundation.  
 Rutgers University, the State University of New Jersey  
 School of International Relations of the University of Southern California.  
 SIRIMAR (Societa Internazionale Recerche Marine) Division, Office of the Vice President for Research, Pennsylvania State University.  
 Social Science Research Council.  
 Solar Energy Research Institute (SERI).  
 Stanford Electronic Laboratories, Department of Electrical Engineering, School of Engineering, Stanford University, Stanford, CA.  
 Stanford Research Institute, Menlo Park, CA.  
 Stanford University (the George Vanderbilt Foundation), Stanford, CA.  
 Syracuse University.  
 Tulane University Graduate School.  
 Tulane University Medical School.  
 University of Alabama.  
 University of Alabama Medical Center.  
 University of Chicago (as a participant in the International Cooperation Administration Program No. W-74 only).  
 University of Colorado (Department of History), Boulder, CO.  
 University of Connecticut, College of Liberal Arts and Science (Department of Germanic and Slavic Languages).

University of Hawaii, Honolulu, HI.  
 University of Illinois at Urbana-Champaign, Austria-Illinois Exchange Program.  
 University of Kansas, Office of International Programs.  
 University of La Verne (La Verne College of Athens)  
 University of Michigan (School of Natural Resources), Ann Arbor, MI.  
 University of Minnesota, Department of Plant Pathology (in relationship to research project abroad).  
 University of Nebraska Mission in Columbia, South America.  
 University of North Carolina at Chapel Hill.  
 University of Notre Dame, Notre Dame, IN.  
 University of Puerto Rico.  
 University of Washington (Department of Marketing, Transportation, and International Business) and (The School of Public Health and Community Medicine), Seattle, WA.  
 Wayne State University, Detroit, MI.  
 Wenner-Gren Foundation for Anthropological Research, Inc.  
 Williams College, Economic Department, Williamstown, MA.

(b) *Public international organizations of which the United States is a member by treaty or statute.* The following-listed organizations have been determined to be public international organizations of which the United States is a member by treaty or statute:

The North Atlantic Treaty Organization.  
 United Nations and all agencies and organizations which are a part thereof.

(c) *International Organizations Immunities Act designations.* The following public international organizations are entitled to enjoy the privileges, exemptions, and immunities provided for in the International Organizations Immunities Act, and are considered as public international organizations of which the United States is a member by treaty or statute within the meaning of section 316(b) of the Act and as public international organizations in which the United States participates by treaty or statute within the meaning of section 319(b) of the Act:

African Development Bank (E.O. 12403, Feb. 8, 1983).  
 African Development Fund (E.O. 11977, Mar. 14, 1977).  
 Asian Development Bank (E.O. 11334, Mar. 7, 1967).  
 Caribbean Organization (E.O. 10983, Dec. 30, 1961).  
 Criminal Police Organization (E.O. 12425, June 16, 1983).

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- Customs Cooperation Council (E.O. 11596, June 5, 1971).
- European Space Research Organization (ESRO) (E.O. 11760, Jan. 17, 1974).
- Food and Agriculture Organization, The (E.O. 9698, Feb. 19, 1946).
- Great Lakes Fishery Commission (E.O. 11059, Oct. 23, 1962).
- Inter-American Defense Board (E.O. 10228, Mar. 26, 1951).
- Inter-American Development Bank (E.O. 10873, Apr. 8, 1960).
- Inter-American Institute for Cooperation on Agriculture (E.O. 9751, July 11, 1946).
- Inter-American Statistical Institute (E.O. 9751, July 11, 1946).
- Inter-American Tropical Tuna Commission (E.O. 11059, Oct. 23, 1962).
- Intergovernmental Committee for European Migration (formerly the Provisional Intergovernmental Committee for the Movement of Migrants from Europe) (E.O. 10335, Mar. 28, 1952).
- Intergovernmental Maritime Consultative Organization (E.O. 10795, Dec. 13, 1958).
- International Atomic Energy Agency (E.O. 10727, Aug. 31, 1957).
- International Bank for Reconstruction and Development (E.O. 9751, July 11, 1946).
- International Centre for Settlement of Investment Disputes (E.O. 11966, Jan. 19, 1977).
- International Civil Aviation Organization (E.O. 9863, May 31, 1947).
- International Coffee Organization (E.O. 11225, May 22, 1965).
- International Cotton Advisory Committee (E.O. 9911, Dec. 19, 1947).
- International Development Association (E.O. 11966, Jan. 19, 1977).
- International Fertilizer Development Center (E.O. 11977, Mar. 14, 1977).
- International Finance Corporation (E.O. 10680, Oct. 2, 1956).
- International Food Policy Research Institute (E.O. 12359, Apr. 22, 1982).
- International Hydrographic Bureau (E.O. 10769, May 29, 1958).
- International Institute for Cotton (E.O. 11283, May 27, 1966).
- International Joint Commission—United States and Canada (E.O. 9972, June 25, 1948).
- International Labor Organization, The (functions through staff known as The International Labor Office) (E.O. 9698, Feb. 19, 1946).
- International Maritime Satellite Organization (E.O. 12238, Sept. 12, 1980).
- International Monetary Fund (E.O. 9751, July 11, 1946).
- International Pacific Halibut Commission (E.O. 11059, Oct. 23, 1962).
- International Secretariat for Volunteer Service (E.O. 11363, July 20, 1967).
- International Telecommunication Union (E.O. 9863, May 31, 1947).
- International Telecommunications Satellite Organization (INTELSAT) (E.O. 11718, May 14, 1973).
- International Wheat Advisory Committee (E.O. 9823, Jan. 24, 1947).
- Multinational Force and Observers (E.O. 12359, Apr. 22, 1982).
- Organization for European Economic Cooperation (E.O. 10133, June 27, 1950) (Now known as Organization for Economic Cooperation and Development; 28 FR 2959, Mar. 26, 1963).
- Organization of African Unity (OAU) (E.O. 11767, Feb. 19, 1974).
- Organization of American States (includes Pan American Union) (E.O. 10533, June 3, 1954).
- Pan American Health Organization (includes Pan American Sanitary Bureau) (E.O. 10864, Feb. 18, 1960).
- Preparatory Commission of the International Atomic Energy Agency (E.O. 10727, Aug. 31, 1957).
- Preparatory Commission for the International Refugee Organization and its successor, the International Refugee Organization (E.O. 9887, Aug. 22, 1947).
- South Pacific Commission (E.O. 10086, Nov. 25, 1949).
- United International Bureau for the Protection of Intellectual Property (BIRPI) (E.O. 11484, Sept. 29, 1969).
- United Nations, The (E.O. 9698, Feb. 19, 1946).
- United Nations Educational, Scientific, and Cultural Organizations (E.O. 9863, May 31, 1947).
- Universal Postal Union (E.O. 10727, Aug. 31, 1957).
- World Health Organization (E.O. 10025, Dec. 30, 1948).
- World Intellectual Property Organization (E.O. 11866, June 18, 1975).
- World Meteorological Organization (E.O. 10676, Sept. 1, 1956).
- [32 FR 9634, July 4, 1967]
- EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 316.20, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

### PART 318—PENDING REMOVAL PROCEEDINGS

AUTHORITY: 8 U.S.C. 1103, 1252, 1429, 1443; 8 CFR part 2.

SOURCE: 62 FR 10394, Mar. 6, 1997, unless otherwise noted.

#### § 318.1 Warrant of arrest.

For the purposes of section 318 of the Act, a notice to appear issued under 8

CFR part 239 (including a charging document issued to commence proceedings under sections 236 or 242 of the Act prior to April 1, 1997) shall be regarded as a warrant of arrest.

**PART 319—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: SPOUSES OF UNITED STATES CITIZENS**

Sec.

- 319.1 Person living in marital union with United States citizen spouse.
- 319.2 Person whose United States citizen spouse is employed abroad.
- 319.3 Surviving spouses of United States citizens who died during a period of honorable service in an active duty status in the Armed Forces of the United States.
- 319.4 Persons continuously employed for 5 years by United States organizations engaged in disseminating information.
- 319.5 Public international organizations in which the U.S. participates by treaty or statute.
- 319.6 United States nonprofit organizations engaged abroad in disseminating information which significantly promotes U.S. interests.
- 319.7–319.10 [Reserved]
- 319.11 Filing of application.

AUTHORITY: 8 U.S.C. 1103, 1430, 1443.

**§ 319.1 Persons living in marital union with United States citizen spouse.**

(a) *Eligibility.* To be eligible for naturalization under section 319(a) of the Act, the spouse of a United States citizen must establish that he or she:

- (1) Has been lawfully admitted for permanent residence to the United States;
- (2) Has resided continuously within the United States, as defined under § 316.5 of this chapter, for a period of at least three years after having been lawfully admitted for permanent residence;
- (3) Has been living in marital union with the citizen spouse for the three years preceding the date of examination on the application, and the spouse has been a United States citizen for the duration of that three year period;
- (4) Has been physically present in the United States for periods totaling at least 18 months;
- (5) Has resided, as defined in § 316.5 of this chapter, for at least 3 months immediately preceding the filing of the

application, or immediately preceding the examination on the application if the application was filed early pursuant to section 334(a) of the Act and the three month period falls within the required period of residence under section 316(a) or 319(a) of the Act, in the State or Service district having jurisdiction over the alien's actual place of residence;

(6) Has resided continuously within the United States from the date of application for naturalization until the time of admission to citizenship;

(7) For all relevant periods under this paragraph, has been and continues to be a person of good moral character, attached to the principles of the Constitution of the United States, and favorably disposed toward the good order and happiness of the United States; and

(8) Has complied with all other requirements for naturalization as provided in part 316 of this chapter, except for those contained in § 316.2 (a)(3) through (a)(5) of this chapter.

(b) *Marital union*—(1) *General.* An applicant lives in marital union with a citizen spouse if the applicant actually resides with his or her current spouse. The burden is on the applicant to establish, in each individual case, that a particular marital union satisfies the requirements of this part.

(2) *Loss of Marital Union*—(i) *Divorce, death or expatriation.* A person is ineligible for naturalization as the spouse of a United States citizen under section 319(a) of the Act if, before or after the filing of the application, the marital union ceases to exist due to death or divorce, or the citizen spouse has expatriated. Eligibility is not restored to an applicant whose relationship to the citizen spouse terminates before the applicant's admission to citizenship, even though the applicant subsequently marries another United States citizen.

(ii) *Separation*—(A) *Legal separation.* Any legal separation will break the continuity of the marital union required for purposes of this part.

(B) *Informal separation.* Any informal separation that suggests the possibility of marital disunity will be evaluated on a case-by-case basis to determine whether it is sufficient enough to signify the dissolution of the marital union.

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(C) *Involuntary separation.* In the event that the applicant and spouse live apart because of circumstances beyond their control, such as military service in the Armed Forces of the United States or essential business or occupational demands, rather than because of voluntary legal or informal separation, the resulting separation, even if prolonged, will not preclude naturalization under this part.

(c) *Physical presence in the United States.* In the event that the alien spouse has never been in the United States, eligibility under this section is not established even though the alien spouse resided abroad in marital union with the citizen spouse during the three year period.

[56 FR 50488, Oct. 7, 1991, as amended at 76 FR 53798, Aug. 29, 2011]

### §319.2 Person whose United States citizen spouse is employed abroad.

(a) *Eligibility.* To be eligible for naturalization under section 319(b) of the Act, the alien spouse of a United States citizen must:

(1) Establish that his or her citizen spouse satisfies the requirements under section 319(b)(1) of the Act, including that he or she is regularly stationed abroad. For purposes of this section, a citizen spouse is regularly stationed abroad if he or she proceeds abroad, for a period of not less than one year, pursuant to an employment contract or orders, and assumes the duties of employment;

(2) At the time of examination on the application for naturalization, be present in the United States pursuant to a lawful admission for permanent residence;

(3) At the time of naturalization, be present in the United States;

(4) Declare in good faith, upon naturalization before the Service, an intention:

(i) To reside abroad with the citizen spouse; and

(ii) To take up residence within the United States immediately upon the termination of the citizen spouse's employment abroad;

(5) Be a person of good moral character, attached to the principles of the Constitution of the United States, and favorably disposed toward the good

order and happiness of the United States; and

(6) Comply with all other requirements for naturalization as provided in part 316 of this chapter, except for those contained in §316.2(a)(3) through (a)(6) of this chapter.

(b) *Alien spouse's requirement to depart abroad immediately after naturalization.* An alien spouse seeking naturalization under section 319(b) of the Act must:

(1) Establish that he or she will depart to join the citizen spouse within 30 to 45 days after the date of naturalization;

(2) Notify the Service immediately of any delay or cancellation of the citizen spouse's assignment abroad; and

(3) Notify the Service immediately if he or she is unable to reside with the citizen spouse because the citizen spouse is employed abroad in an area of hostilities where dependents may not reside.

(c) *Loss of marital union due to death, divorce, or expatriation of the citizen spouse.* A person is ineligible for naturalization as the spouse of a United States citizen under section 319(b) of the Act if, before or after the filing of the application, the marital union ceases to exist due to death or divorce, or the citizen spouse has expatriated. Eligibility is not restored to an applicant whose relationship to the citizen spouse terminates before the applicant's admission into citizenship, even though the applicant subsequently marries another United States citizen.

[56 FR 50488, Oct. 7, 1991]

### §319.3 Surviving spouses of United States citizens who died during a period of honorable service in an active duty status in the Armed Forces of the United States.

(a) *Eligibility.* To be eligible for naturalization under section 319(d) of the Act, the surviving spouse, child, or parent of a United States citizen must:

(1) Establish that his or her citizen spouse, child, or parent died during a period of honorable service in an active duty status in the Armed Forces of the United States and, in the case of a surviving spouse, establish that he or she was living in marital union with the citizen spouse, in accordance with 8

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CFR 319.1(b), at the time of the citizen spouse's death;

(2) At the time of examination on the application for naturalization, reside in the United States pursuant to a lawful admission for permanent residence;

(3) Be a person of good moral character, attached to the principles of the Constitution of the United States, and favorably disposed toward the good order and happiness of the United States; and

(4) Comply with all other requirements for naturalization as provided in 8 CFR 316, except for those contained in 8 CFR 316.2(a)(3) through (6).

(b) *Remarriage of the surviving spouse.* The surviving spouse of a United States citizen described under paragraph (a)(1) of this section remains eligible for naturalization under section 319(d) of the Act, even if the surviving spouse remarries.

[56 FR 50488, Oct. 7, 1991, as amended at 76 FR 53798, Aug. 29, 2011]

### **§ 319.4 Persons continuously employed for 5 years by United States organizations engaged in disseminating information.**

To be eligible for naturalization under section 319(c) of the Act, an applicant must:

(a) Establish that he or she is employed as required under section 319(c)(1) of the Act;

(b) Reside in the United States pursuant to a lawful admission for permanent residence;

(c) Establish that he or she has been employed as required under paragraph (a) of this section continuously for a period of not less than five years after a lawful admission for permanent residence;

(d) File his or her application for naturalization while employed as required under paragraph (a) of this section, or within six months following the termination of such employment;

(e) Be present in the United States at the time of naturalization;

(f) Declare in good faith, upon naturalization before the Service, an intention to take up residence within the United States immediately upon his or her termination of employment;

(g) Be a person of good moral character, attached to the principles of the

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Constitution of the United States, and favorably disposed toward the good order and happiness of the United States; and

(h) Comply with all other requirements for naturalization as provided in part 316 of this chapter, except for those contained in § 316.2(a)(3) through (a)(6) of this chapter.

[56 FR 50489, Oct. 7, 1991]

### **§ 319.5 Public international organizations in which the U.S. participates by treaty or statute.**

Organizations designated by the President as international organizations pursuant to the International Organizations Immunities Act are considered as public international organizations in which the United States participates by treaty or statute within the meaning of section 319(b) or the Act. For a list of such organizations see § 316.20(b) of this chapter. In addition, the following have been determined to be public international organizations within the purview of section 319(b) of the Act:

The North Atlantic Treaty Organization.  
The United Nations and all agencies and organizations which are a part thereof.

The regional commissioner shall forward a copy of each decision regarding a public international organization to the Assistant Commissioner, Naturalization.

[32 FR 9635, July 4, 1967. Redesignated at 33 FR 255, Jan. 9, 1968. Further redesignated and amended at 56 FR 50489, Oct. 7, 1991]

### **§ 319.6 United States nonprofit organizations engaged abroad in disseminating information which significantly promotes U.S. interests.**

The following have been determined to be U.S. incorporated nonprofit organizations principally engaged in conducting abroad through communications media the dissemination of information which significantly promotes U.S. interests abroad within the purview of section 319(c) of the Act:

Free Europe, Inc.; formerly Free Europe Committee, Inc.; National Committee for a Free Europe (including Radio Free Europe)).

Radio Liberty Committee, Inc. (formerly American Committee for Liberation, Inc.;

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American Committee for Liberation of the Peoples of Russia, Inc.; American Committee for Liberation from Bolshevism, Inc.).

[33 FR 255, Jan. 9, 1968. Redesignated and amended at 56 FR 50489, Oct. 7, 1991]

### §§ 319.7–319.10 [Reserved]

#### § 319.11 Filing of application.

(a) *General.* An applicant under this part must submit an application for naturalization in accordance with the form instructions with the fee required by 8 CFR 103.7(b)(1). An alien spouse applying for naturalization under section 319(b) of the Act who is described in 8 CFR 319.2 must also submit a statement of intent containing the following information about the citizen spouse's employment and future intent:

- (1) The name of the employer and;
- (i) The nature of the employer's business; or
- (ii) The ministerial, religious, or missionary activity in which the employer is engaged;
- (2) Whether the employing entity is owned in whole or in part by United States interests;
- (3) Whether the employing entity is engaged in whole or in part in the development of the foreign trade and commerce of the United States;
- (4) The nature of the activity in which the citizen spouse is engaged;
- (5) The anticipated period of employment abroad;
- (6) Whether the alien spouse intends to reside abroad with the citizen spouse; and,
- (7) Whether the alien spouse intends to take up residence within the United States immediately upon the termination of such employment abroad of the citizen spouse.

(b) *Applications by military spouses—*(1) *General.* The alien spouses of United States military personnel being assigned abroad must satisfy the basic requirements of section 319(b) of the Act and of paragraph (a) of this section.

(2) *Government expense.* In the event that transportation expenses abroad for the alien spouse are to be paid by military authorities, a properly executed Certificate of Overseas Assignment to Support Application to File

Petition for Naturalization, DD Form 1278 will be submitted in lieu of the statement of intent required by paragraph (a) of this section. Any DD Form 1278 issued more than 90 days in advance of departure is unacceptable for purposes of this section.

(3) *Private expense.* In the event that the alien spouse is not authorized to travel abroad at military expense, the alien spouse must submit in lieu of the statement of intent required by paragraph (a) of this section:

- (i) A copy of the citizen spouse's military travel orders,
- (ii) A letter from the citizen spouse's commanding officer indicating that the military has no objection to the applicant traveling to and residing in the vicinity of the citizen spouse's new duty station; and
- (iii) Evidence of transportation arrangements to the new duty station.

[56 FR 50489, Oct. 7, 1991, as amended at 76 FR 53798, Aug. 29, 2011]

## PART 320—CHILD BORN OUTSIDE THE UNITED STATES AND RESIDING PERMANENTLY IN THE UNITED STATES; REQUIREMENTS FOR AUTOMATIC ACQUISITION OF CITIZENSHIP

Sec.

- 320.1 What definitions are used in this part?  
320.2 Who is eligible for citizenship?  
320.3 How, where, and what forms and other documents should be filed?  
320.4 Who must appear for an interview on the application for citizenship?  
320.5 Decision.

AUTHORITY: 8 U.S.C. 1103, 1443; 8 CFR part 2.

SOURCE: 66 FR 32144, June 13, 2001, unless otherwise noted.

### § 320.1 What definitions are used in this part?

As used in this part, the term:

*Adopted* means adopted pursuant to a full, final and complete adoption. If a foreign adoption of an orphan was not full and final, was defective, or the unmarried U.S. citizen parent or U.S. citizen parent and spouse jointly did not see and observe the child in person prior to or during the foreign adoption proceedings, the child is not considered

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to have been fully, finally and completely adopted and must be readopted in the United States. Readoption requirements may be waived if the state of residence of the United States citizen parent(s) recognizes the foreign adoption as full and final under that state's adoption laws.

*Adopted child* means a person who has been adopted as defined above and who meets the requirements of section 101(b)(1)(E) or (F) of the Act.

*Child* means a person who meets the requirements of section 101(c)(1) of the Act.

*Joint custody*, in the case of a child of divorced or legally separated parents, means the award of equal responsibility for and authority over the care, education, religion, medical treatment, and general welfare of a child to both parents by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence.

*Legal custody* refers to the responsibility for and authority over a child.

(1) For the purpose of the CCA, the Service will presume that a U.S. citizen parent has legal custody of a child, and will recognize that U.S. citizen parent as having lawful authority over the child, absent evidence to the contrary, in the case of:

(i) A biological child who currently resides with both natural parents (who are married to each other, living in marital union, and not separated),

(ii) A biological child who currently resides with a surviving natural parent (if the other parent is deceased), or

(iii) In the case of a biological child born out of wedlock who has been legitimated and currently resides with the natural parent.

(2) In the case of an adopted child, a determination that a U.S. citizen parent has legal custody will be based on the existence of a final adoption decree. In the case of a child of divorced or legally separated parents, the Service will find a U.S. citizen parent to have legal custody of a child, for the purpose of the CCA, where there has been an award of primary care, control, and maintenance of a minor child to a parent by a court of law or other appropriate government entity pursuant to the laws of the state or country of

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residence. The Service will consider a U.S. citizen parent who has been awarded “joint custody,” to have legal custody of a child. There may be other factual circumstances under which the Service will find the U.S. citizen parent to have legal custody for purposes of the CCA.

### § 320.2 Who is eligible for citizenship?

(a) *General*. To be eligible for citizenship under section 320 of the Act, a person must establish that the following conditions have been met after February 26, 2001:

(1) The child has at least one United States citizen parent (by birth or naturalization);

(2) The child is under 18 years of age; and

(3) The child is residing in the United States in the legal and physical custody of the United States citizen parent, pursuant to a lawful admission for permanent residence.

(b) *Additional requirements if child is adopted*. If adopted, the child must meet all of the requirements in paragraph (a) of this section as well as satisfy the requirements applicable to adopted children under section 101(b)(1) of the Act.

### § 320.3 How, where, and what forms and other documents should be filed?

(a) *Application*. Individuals who are applying for a certificate of citizenship on their own behalf should submit the request in accordance with the form instructions on the form prescribed by USCIS for that purpose. An application for a certificate of citizenship under this section on behalf of a child who has not reached the age of 18 years must be submitted by that child's U.S. citizen biological or adoptive parent(s), or legal guardian.

(b) *Evidence*. (1) An applicant under this section must establish eligibility as described in 8 CFR 320.2. An applicant must submit the following supporting evidence unless such evidence is already contained in USCIS administrative file(s):

(i) The child's birth certificate or record;

(ii) Marriage certificate of child's parents (if applicable);



(iii) If the child's parents were married before their marriage to each other, proof of termination of any previous marriage of each parent (e.g., death certificate or divorce decree);

(iv) Evidence of U.S. citizenship of parent, (*i.e.*, birth certificate; naturalization certificate; FS-240, Report of Birth Abroad; a valid unexpired U.S. passport; or certificate of citizenship);

(v) If the child was born out of wedlock, documents verifying legitimation according to the laws of the child's residence or domicile or father's residence or domicile (if applicable);

(vi) In case of divorce, legal separation, or adoption, documentation of legal custody;

(vii) Copy of Permanent Resident Card/Alien Registration Receipt Card or other evidence of lawful permanent resident status (e.g. I-551 stamp in a valid foreign passport or Service-issued travel document);

(viii) If adopted, a copy of the full, final adoption decree and, if the adoption was outside of the United States and the child immigrated as an IR-4 (orphans coming to the United States to be adopted by U.S. citizen parent(s)), evidence that the foreign adoption is recognized by the state where the child is permanently residing; and

(ix) Evidence of all legal name changes, if applicable, for the child and U.S. citizen parent.

(2) If the Service requires any additional documentation to make a decision on the application for certificate of citizenship, applicants may be asked to provide that documentation under separate cover or at the time of interview. Applicants do not need to submit documents that were submitted in connection with: An application for immigrant visa and retained by the American Consulate for inclusion in the immigrant visa package, or an immigrant petition or application and included in a Service administrative file. Applicants should indicate that they wish to rely on such documents and identify the administrative file(s) by name and alien number. The Service will only request the required documentation again if necessary.

[66 FR 32144, June 13, 2001, as amended at 74 FR 26940, June 5, 2009; 76 FR 53799, Aug. 29, 2011]

#### **§ 320.4 Who must appear for an interview on the application for citizenship?**

All applicants (and U.S. citizen parent(s) if application filed on behalf of a minor biological or adopted child) must appear for examination unless such examination is waived under the guidelines expressed in § 341.2 of this chapter.

#### **§ 320.5 Decision.**

(a) *Approval of application.* If the application for the certificate of citizenship is approved, after the applicant takes the oath of allegiance prescribed in 8 CFR 337.1 (unless the oath is waived), USCIS will issue a certificate of citizenship.

(b) *Denial of application.* If the decision of USCIS is to deny the application for a certificate of citizenship under this section, the applicant will be advised in writing of the reasons for denial and of the right to appeal in accordance with 8 CFR 103.3(a). An applicant may file an appeal within 30 days of service of the decision in accordance with the instructions on the form prescribed by USCIS for that purpose, and with the fee required by 8 CFR 103.7(b)(1).

(c) *Subsequent application.* After an application for a certificate of citizenship has been denied and the time for appeal has expired, USCIS will reject a subsequent application submitted by the same individual and the applicant will be instructed to submit a motion for reopening or reconsideration in accordance with 8 CFR 103.5. The motion must be accompanied by the rejected application and the fee specified in 8 CFR 103.7(b)(1).

[76 FR 53799, Aug. 29, 2011]

### **PART 322—CHILD BORN OUTSIDE THE UNITED STATES; REQUIREMENTS FOR APPLICATION FOR CERTIFICATE OF CITIZENSHIP**

#### **Sec.**

322.1 What are the definitions used in this part?

322.2 Eligibility.

322.3 Application and supporting documents.

322.4 Interview.

322.5 Decision.

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AUTHORITY: 8 U.S.C. 1103, 1443; 8 CFR part 2.

SOURCE: 66 FR 32144, June 13, 2001, unless otherwise noted.

### § 322.1 What are the definitions used in this part?

As used in this part the term:

*Adopted* means adopted pursuant to a full, final and complete adoption. In the case of an orphan adoption, if a foreign adoption was not full and final, was defective, or the unmarried U.S. citizen parent or U.S. citizen parent and spouse jointly did not see and observe the child in person prior to or during the foreign adoption proceedings, an orphan is not considered to have been adopted and must be re-adopted in the United States or satisfy the requirements of section 101(b)(1)(E) of the Act.

*Adopted child* means a person who has been adopted as defined above and who meets the requirements of section 101(b)(1)(E), (F) or (G) of the Act.

*Child* means a person who meets the requirements of section 101(c)(1) of the Act.

*Lawful admission* shall have the same meaning as provided in section 101(a)(13) of the Act.

*Joint custody*, in the case of a child of divorced or legally separated parents, means the award of equal responsibility for and authority over the care, education, religion, medical treatment and general welfare of a child to both parents by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence.

*Legal custody* refers to the responsibility for and authority over a child.

(1) For the purpose of the CCA, the Service will presume that a U.S. citizen parent has legal custody of a child, and will recognize that U.S. citizen parent as having lawful authority over the child, absent evidence to the contrary, in the case of:

(i) A biological child who currently resides with both natural parents (who are married to each other, living in marital union, and not separated),

(ii) A biological child who currently resides with a surviving natural parent (if the other parent is deceased), or

(iii) In the case of a biological child born out of wedlock who has been legitimated and currently resides with the natural parent.

(2) In the case of an adopted child, a determination that a U.S. citizen parent has legal custody will be based on the existence of a final adoption decree. In the case of a child of divorced or legally separated parents, the Service will find a U.S. citizen parent to have legal custody of a child, for the purpose of the CCA, where there has been an award of primary care, control, and maintenance of a minor child to a parent by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence. The Service will consider a U.S. citizen parent who has been awarded “joint custody,” to have legal custody of a child. There may be other factual circumstances under which the Service will find the U.S. citizen parent to have legal custody for purposes of the CCA.

[66 FR 32144, June 13, 2001, as amended at 76 FR 53799, Aug. 29, 2011]

### § 322.2 Eligibility.

(a) *General*. A child will be eligible for citizenship under section 322 of the Act, if the following conditions have been fulfilled:

(1) The child has at least one United States citizen parent (by birth or naturalization);

(2) The United States citizen parent has been physically present in the United States or its outlying possessions for at least 5 years, at least 2 of which were after the age of 14, or the United States citizen parent has a United States citizen parent who has been physically present in the United States or its outlying possessions for at least 5 years, at least 2 of which were after the age of 14;

(3) The child currently is under 18 years of age;

(4) The child currently is residing outside the United States in the legal and physical custody of the United States citizen parent; and

(5) The child is temporarily present in the United States pursuant to a lawful admission and is maintaining such lawful status in the United States.

(b) *Additional requirements if child is adopted.* If an adopted child, all of the requirements in paragraph (a) of this section must be fulfilled and the child must satisfy the requirements applicable to adopted children under section 101(b)(1) of the Act.

(c) *Exceptions for children of military personnel.* Pursuant to section 322(d) of the Act, a child of a member of the Armed Forces of the United States residing abroad is exempt from the temporary physical presence, lawful admission, and maintenance of lawful status requirements under 8 CFR 322.2(a)(5), if the child:

- (1) Is authorized to accompany and reside abroad with the member of the Armed Forces pursuant to the member's official orders; and
- (2) Is accompanying and residing abroad with the member of the Armed Forces.

[66 FR 32144, June 13, 2001, as amended at 76 FR 53799, Aug. 29, 2011]

### § 322.3 Application and supporting documents.

(a) *Application.* A U.S. citizen parent of an alien child (including an adopted child) may file an application for the child to become a citizen and obtain a certificate of citizenship under section 322 of the Act by submitting an application on the form prescribed by USCIS in accordance with the form instructions and with the fee prescribed by 8 CFR 103.7(b)(1). If the U.S. citizen parent has died, the child's U.S. citizen grandparent or U.S. citizen legal guardian may submit the application, provided the application is filed not more than 5 years after the death of the U.S. citizen parent.

(b) *Evidence.* (1) An applicant under this section shall establish eligibility under § 322.2. In addition to the forms and the appropriate fee as required in § 103.7(b)(1) of this chapter, an applicant must submit the following required documents unless such documents are already contained in the Service administrative file(s):

- (i) The child's birth certificate or record;
- (ii) Marriage certificate of child's parents (if applicable);
- (iii) If the child's parents were married before their marriage to each

other, proof of termination of any previous marriage of each parent (e.g., death certificate or divorce decree);

(iv) Evidence of U.S. citizenship of parent (*i.e.*, birth certificate; naturalization certificate; FS-240, Report of Birth Abroad; a valid unexpired U.S. passport; or certificate of citizenship);

(v) If the child was born out of wedlock, documents verifying legitimation according to the laws of the child's residence or domicile or father's residence or domicile (if applicable);

(vi) In case of divorce, legal separation, or adoption, documentation of legal custody (if applicable);

(vii) Documentation establishing that the U.S. citizen parent or U.S. citizen grandparent meets the required physical presence requirements (e.g., school records, military records, utility bills, medical records, deeds, mortgages, contracts, insurance policies, receipts, or attestations by churches, unions, or other organizations);

(viii) Evidence that the child is present in the United States pursuant to a lawful admission and is maintaining such lawful status, or evidence establishing that the child qualifies for an exception to these requirements as provided in 8 CFR 322.2(c) pursuant to section 322(d) of the Act. Such evidence may be presented at the time of interview when appropriate;

(ix) If adopted, a copy of a full, final adoption decree;

(x) For adopted children (not orphans) applying under section 322 of the Act, evidence that they satisfy the requirements of section 101(b)(1)(E);

(xi) For adopted orphans applying under section 322 of the Act, a copy of notice of approval of the orphan petition and supporting documentation for such petition (except the home study) or evidence that the child has been admitted for lawful permanent residence in the United States with the immigrant classification of IR-3 (Orphan adopted abroad by a U.S. citizen) or IR-4 (Orphan to be adopted by a U.S. citizen);

(xii) For a Hague Convention adoptee applying under section 322 of the Act, a copy of the notice of approval of the Convention adoptee petition and its supporting documentation, or evidence that the child has been admitted for

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lawful permanent residence in the United States with the immigrant classification of IH-3 (Hague Convention Orphan adopted abroad by a U.S. citizen) or IH-4 (Hague Convention Orphan to be adopted by a U.S. citizen); and

(xiii) Evidence of all legal name changes, if applicable, for the child, U.S. citizen parent, U.S. citizen grandparent, or U.S. citizen legal guardian.

(2) If USCIS requires any additional documentation to make a decision on the application, the parents may be asked to provide that documentation under separate cover or at the time of interview. Parents do not need to submit documents that were submitted in connection with: An application for immigrant visa and retained by the American Consulate for inclusion in the immigrant visa package, or another immigrant petition or application and included in a Service administrative file. Parents should indicate that they wish to rely on such documents and identify the administrative file(s) by name and alien number. The Service will only request the required documentation again if necessary.

[66 FR 32144, June 13, 2001, as amended at 72 FR 56867, Oct. 4, 2007; 74 FR 26940, June 5, 2009; 76 FR 53799, Aug. 29, 2011]

#### § 322.4 Interview.

The U.S. citizen parent and the child must appear in person before a USCIS officer for examination on the application under this section. If the U.S. citizen parent is deceased, the child's U.S. citizen grandparent or U.S. citizen legal guardian who filed the application on the child's behalf must appear.

[76 FR 53799, Aug. 29, 2011]

#### § 322.5 Decision.

(a) *Approval of application.* If the application for certificate of citizenship is approved, after the applicant takes the oath of allegiance prescribed in 8 CFR 337.1 (unless the oath is waived), USCIS will issue a certificate of citizenship. The child is a citizen as of the date of approval and administration of the oath of allegiance.

(b) *Denial of application.* If the USCIS decision is to deny the application for a certificate of citizenship under this

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section, the applicant will be furnished with the reasons for denial and advised of the right to appeal in accordance with the provisions of 8 CFR 103.3(a). An applicant may file an appeal within 30 days of service of the decision in accordance with the instructions on the form prescribed by USCIS for that purpose, and with the fee required by 8 CFR 103.7(b)(1).

(c) *Subsequent application.* After an application for a certificate of citizenship has been denied and the time for appeal has expired, USCIS will reject a subsequent application submitted by the same individual and the applicant will be instructed to submit a motion for reopening or reconsideration in accordance with 8 CFR 103.5. The motion must be accompanied by the rejected application and the fee specified in 8 CFR 103.7(b)(1).

[76 FR 53800, Aug. 29, 2011]

### PART 324—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: WOMEN WHO HAVE LOST UNITED STATES CITIZENSHIP BY MARRIAGE AND FORMER CITIZENS WHOSE NATURALIZATION IS AUTHORIZED BY PRIVATE LAW

Sec.

324.1 Definitions.

324.2 Former citizen at birth or by naturalization.

324.3 Women, citizens of the United States at birth, who lost or are believed to have lost citizenship by marriage and whose marriage has terminated.

324.4 Women restored to United States citizenship by the act of June 25, 1936, as amended by the act of July 2, 1940.

324.5 Former citizen of the United States whose naturalization by taking the oath is authorized by a private law.

AUTHORITY: 8 U.S.C. 1103, 1435, 1443, 1448, 1101 note.

#### § 324.1 Definitions.

As used in this part:

*Oath* means the Oath of Allegiance as prescribed in section 337 of the Act.

[56 FR 50490, Oct. 7, 1991]

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## § 324.3

### § 324.2 Former citizen at birth or by naturalization.

(a) *Eligibility.* To be eligible for naturalization under section 324(a) of the Act, an applicant must establish that she:

(1) Was formerly a United States citizen;

(2) Lost or may have lost United States citizenship:

(i) Prior to September 22, 1922, by marriage to an alien, or by the loss of United States citizenship of the applicant's spouse; or

(ii) On or after September 22, 1922, by marriage before March 3, 1931 to an alien ineligible to citizenship;

(3) Did not acquire any other nationality by affirmative act other than by marriage;

(4) Either:

(i) Has resided in the United States continuously since the date of the marriage referred to in paragraph (a)(2) of this section; or

(ii) Has been lawfully admitted for permanent residence prior to filing an application for naturalization;

(5) Has been and is a person of good moral character, attached to the principles of the Constitution of the United States, and favorably disposed toward the good order and happiness of the United States, for the period of not less than five years immediately preceding the examination on the application for naturalization up to the time of admission to citizenship; and

(6) Complies with all other requirements for naturalization as provided in part 316 of this chapter, except that:

(i) The applicant is not required to satisfy the residence requirements under § 316.2(a)(3) through (a)(6) of this chapter; and,

(ii) The applicant need not set forth an intention to reside permanently within the United States.

(b) *Application.* An applicant for naturalization under this section must submit an application on the form designated by USCIS in accordance with the form instructions and with the fee prescribed in 8 CFR 103.7(b)(1) as required by 8 CFR 316.4. The application must be accompanied by a statement describing the applicant's eligibility as provided in paragraph (a) of this sec-

tion as well as any available documentation to establish those facts.

[56 FR 50490, Oct. 7, 1991, as amended at 74 FR 26941, June 5, 2009; 76 FR 53800, Aug. 29, 2011; 76 FR 73477, Nov. 29, 2011]

### § 324.3 Women, citizens of the United States at birth, who lost or are believed to have lost citizenship by marriage and whose marriage has terminated.

(a) *Eligibility.* To be eligible for naturalization under section 324(c) of the Act, an applicant must establish:

(1) That she was formerly a United States citizen by birth;

(2) That she lost or may have lost her United States citizenship:

(i) Prior to September 22, 1922, by marriage to an alien; or

(ii) On or after September 22, 1922, by marriage to an alien ineligible to citizenship before March 3, 1931;

(3) That the marriage specified in paragraph (a)(2) of this section terminated subsequent to January 12, 1941;

(4) That she did not acquire any other nationality by affirmative act other than by marriage; and

(5) That she is not proscribed from naturalization under section 313 of the Act.

(b) *Procedures*—(1) *Application.* An applicant eligible for naturalization pursuant to paragraph (a) of this section, who desires to regain citizenship pursuant to section 324(c) of the Act, shall submit, without fee, an application for naturalization on the form prescribed by USCIS in accordance with the instructions on the form.

(2) *Oath of Allegiance.* The USCIS shall review the applicant's submission, and shall inform the applicant of her eligibility under section 324(c) of the Act to take the oath in conformity with part 337 of this chapter. After the applicant has taken the oath, the applicant will be furnished with a copy of the oath by the clerk of the Court or USCIS, as appropriate, properly certified, for which a fee not exceeding \$5 may be charged. The oath may also be taken abroad before any diplomatic or consular officer of the United States, in accordance with such regulations as

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may be prescribed by the Secretary of State.

[56 FR 50490 and 50491, Oct. 7, 1991, as amended at 74 FR 26941, June 5, 2009; 76 FR 53800, Aug. 29, 2011]

### **§ 324.4 Women restored to United States citizenship by the act of June 25, 1936, as amended by the act of July 2, 1940.**

A woman who was restored to citizenship by the act of June 25, 1936, as amended by the act of July 2, 1940, but who failed to take the oath of allegiance prescribed by the naturalization laws prior to December 24, 1952, may take the oath before any naturalization court or USCIS office within the United States. Such woman shall comply with the procedural requirements of § 324.4(b) and (c) except that a fee not exceeding \$1.00 may be charged if the woman requests a copy of the oath.

[22 FR 9814, Dec. 6, 1957. Redesignated and amended at 56 FR 50490 and 50491, Oct. 7, 1991; 74 FR 26941, June 5, 2009]

### **§ 324.5 Former citizen of the United States whose naturalization by taking the oath is authorized by a private law.**

A former citizen of the United States whose naturalization by taking the oath before any naturalization court or office of USCIS within the United States is authorized by a private law must submit an application on the form specified by USCIS, without fee, in accordance with the form instructions.

[76 FR 53800, Aug. 29, 2011]

## **PART 325—NATIONALS BUT NOT CITIZENS OF THE UNITED STATES; RESIDENCE WITHIN OUTLYING POSSESSIONS**

Sec.

325.1 [Reserved]

325.2 Eligibility.

325.3 Residence.

325.4 Application; documents.

AUTHORITY: 8 U.S.C. 1103, 1436, 1443.

SOURCE: 56 FR 50491, Oct. 7, 1991, unless otherwise noted.

### **§ 325.1 [Reserved]**

### **§ 325.2 Eligibility.**

An applicant for naturalization under section 325 of the Act who owes permanent allegiance to the United States, and who is otherwise qualified may be naturalized if:

(a) The applicant becomes a resident of any State; and

(b) The applicant complies with all of the applicable requirements in parts 316 or 319 of this chapter, as appropriate, except as modified in this part.

### **§ 325.3 Residence.**

(a) For purposes of applying the residence and physical presence requirements in parts 316 and 319 of this chapter, except as they relate to the required three months' residence in a State or Service district, residence and physical presence in an outlying possession of the United States will count as residence and physical presence in the United States.

(b) An applicant who intends to resume residence in an outlying possession after naturalization will be regarded as having established that he or she intends to reside permanently in the United States.

### **§ 325.4 Application; documents.**

(a) An application for naturalization under this part shall be submitted in compliance with § 316.4(a) of this chapter.

(b) The applicant shall submit with the application:

(1) A birth certificate or other evidence of national status;

(2) Proof of identity; and

(3) Evidence of actual residence in the State or Service district, as defined in 8 CFR 316.1, for three months immediately preceding the filing of the application, or immediately preceding the examination on the application if the application was filed early pursuant to section 334(a) of the Act and the three month period falls within the required period of residence under section 316(a) or 319(a) of the Act.

[56 FR 50491, Oct. 7, 1991, as amended at 76 FR 53800, Aug. 29, 2011]

**PART 327—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: PERSONS WHO LOST UNITED STATES CITIZENSHIP THROUGH SERVICE IN ARMED FORCES OF FOREIGN COUNTRY DURING WORLD WAR II**

Sec.

327.1 Eligibility.

327.2 Procedure for naturalization.

AUTHORITY: 8 U.S.C. 1103, 1438, 1443.

**§ 327.1 Eligibility.**

To be eligible for naturalization under section 327 of the Act, an applicant must establish that:

(a) The applicant, on or after September 1, 1939 and on or before September 2, 1945:

(1) Served in the military, air or naval forces of any country at war with a country with which the United States was at war after December 7, 1941 and before September 2, 1945; or

(2) Took an oath of allegiance or obligation for purposes of entering or serving in the military, air, or, naval forces of any country at war with a country with which the United States was at war after December 7, 1941 and before September 2, 1945;

(b) The applicant was a United States citizen at the time of the service or oath specified in paragraph (a) of this section;

(c) The applicant lost United States citizenship as a result of the service or oath specified in paragraph (a) of this section;

(d) The applicant has been lawfully admitted for permanent residence and intends to reside permanently in the United States;

(e) The applicant is, and has been for a period of at least five years immediately preceding taking the oath required in §327.2(c), a person of good moral character, attached to the principles of the Constitution of the United States, and favorably disposed toward the good order and happiness of the United States; and

(f) The applicant has complied with all other requirements for naturalization as provided in part 316 of this chapter, except for those contained in

§ 316.2 (a)(3) through (a)(6) of this chapter.

[56 FR 50492, Oct. 7, 1991]

**§ 327.2 Procedure for naturalization.**

(a) *Application.* An applicant who is eligible for naturalization pursuant to section 327 of the Act and §327.1 shall submit an Application for Naturalization, Form N-400, in accordance with §316.4 of this chapter. Such application must be accompanied by a statement describing the applicant's eligibility under §327.1 (a), (b), and (c) and any available documentation to establish those facts.

(b) *Oath of Allegiance.* Upon naturalization of the applicant, the district director shall transmit a copy of the oath of allegiance taken by the applicant to the Department of State.

[56 FR 50492, Oct. 7, 1991, as amended at 74 FR 26941, June 5, 2009]

**PART 328—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: PERSONS WITH 1 YEAR OF SERVICE IN THE UNITED STATES ARMED FORCES**

Sec.

328.1 Definitions.

328.2 Eligibility.

328.3 [Reserved]

328.4 Application and evidence.

AUTHORITY: 8 U.S.C. 1103, 1439, 1443.

SOURCE: 56 FR 50492, Oct. 7, 1991, unless otherwise noted.

**§ 328.1 Definitions.**

As used in this part:

*Honorable service* means only that military service which is designated as honorable service by the executive department under which the applicant performed that military service. Any service that is designated to be other than honorable will not qualify under this section.

*Service in the Armed Forces of the United States* means:

(1) Active or reserve service in the United States Army, United States Navy, United States Marines, United States Air Force, or United States Coast Guard; or

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(2) Service in a National Guard unit during such time as the unit is Federally recognized as a reserve component of the Armed Forces of the United States.

### § 328.2 Eligibility.

To be eligible for naturalization under section 328(a) of the Act, an applicant must establish that the applicant:

(a) Has served honorably in and, if separated, has been separated honorably from, the Armed Forces of the United States;

(b) Has served under paragraph (a) of this section for a period of 1 or more years, whether that service is continuous or discontinuous;

(c) Is a lawful permanent resident of the United States at the time of the examination on the application;

(d) Has been, during any period within five years preceding the filing of the application for naturalization, or the examination on the application if eligible for early filing under section 334(a) of the Act, and continues to be, of good moral character, attached to the principles of the Constitution of the United States, and favorably disposed toward the good order and happiness of the United States.

(1) An applicant is presumed to satisfy the requirements of this paragraph during periods of honorable service under paragraph (a) of this section.

(2) An applicant must establish that he or she satisfies the requirements of this paragraph from the date of discharge from military until the date of admission to citizenship.

(3) An applicant whose honorable service is discontinuous must also demonstrate that he or she satisfies the requirements of this paragraph for those periods of time when that applicant is not in honorable service.

(e) Has complied with all other requirements for naturalization as provided in part 316 of this chapter, except that:

(1) An applicant who files an application for naturalization while still in honorable service, or within six months after termination of such service, is generally not required to satisfy the residence requirements under § 316.2(a)(3) through (a)(6) of this chap-

ter; however, if the applicant's military service is discontinuous, that applicant must establish, for periods between honorable service during the five years immediately preceding the date of filing the application, or the examination on the application if eligible for early filing under section 334(a) of the Act, that he or she resided in the United States and in the State or Service district in the United States in which the application is filed.

(2) An applicant who files an application for naturalization more than six months after terminating honorable service must satisfy the residence requirements under § 316.2(a)(3) through (a)(6) of this chapter. However, any honorable service by the applicant within the five years immediately preceding the date of filing of the application shall be considered as residence within the United States for purposes of § 316.2(a)(3) of this chapter.

[56 FR 50492, Oct. 7, 1991, as amended at 75 FR 2787, Jan. 19, 2010]

### § 328.3 [Reserved]

### § 328.4 Application and evidence.

(a) *Application.* An applicant for naturalization under section 328 of the Act must submit an application on the form prescribed by USCIS in accordance with the form instructions and as provided in 8 CFR 316.4.

(b) *Evidence.* The applicant's eligibility for naturalization under 8 CFR 328.2(a) or (b) will be established only by the certification of honorable service by the executive department under which the applicant served or is serving.

[76 FR 53800, Aug. 29, 2011]

## PART 329—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: PERSONS WITH ACTIVE DUTY OR CERTAIN READY RESERVE SERVICE IN THE UNITED STATES ARMED FORCES DURING SPECIFIED PERIODS OF HOSTILITIES

Sec.  
329.1 Definitions.  
329.2 Eligibility.  
329.3 [Reserved]



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## § 329.4

329.4 Application and evidence.

AUTHORITY: 8 U.S.C. 1103, 1440, 1443; 8 CFR part 2.

### § 329.1 Definitions.

As used in this part:

*Honorable service and separation* means service and separation from service which the executive department under which the applicant served determines to be honorable, including:

(1) That such applicant had not been separated from service on account of alienage;

(2) That such applicant was not a conscientious objector who performed no military, air or naval duty; and

(3) That such applicant did not refuse to wear a military uniform.

*Service in an active duty status in the Armed Forces of the United States* means active service in the following organizations:

(1) United States Army, United States Navy, United States Marines, United States Air Force, United States Coast Guard; or

(2) A National Guard unit during such time as the unit is Federally recognized as a reserve component of the Armed Forces of the United States and that unit is called for active duty.

*World War I* means the period beginning on April 6, 1917, and ending on November 11, 1918.

[56 FR 50493, Oct. 7, 1991]

### § 329.2 Eligibility.

To be eligible for naturalization under section 329(a) of the Act, an applicant must establish that he or she:

(a) Has served honorably in the Armed Forces of the United States as a member of the Selected Reserve of the Ready Reserve or in an active duty status in the Armed Forces of the United States during:

(1) World War I;

(2) The period beginning on September 1, 1939 and ending on December 31, 1946;

(3) The period beginning on June 25, 1950 and ending on July 1, 1955;

(4) The period beginning on February 28, 1961 and ending on October 15, 1978; or

(5) Any other period as may be designated by the President in an Execu-

tive Order pursuant to section 329(a) of the Act;

(b) If separated, has been separated honorably from service in the Armed Forces of the United States under paragraph (a) of this section;

(c) Satisfies the permanent residence requirement in one of the following ways:

(1) Any time after enlistment or induction into the Armed Forces of the United States, the applicant was lawfully admitted to the United States as a permanent resident; or

(2) At the time of enlistment or induction, the applicant was physically present in the geographical territory of the United States, the Canal Zone, American Samoa, Midway Island (prior to August 21, 1959), or Swain's Island, or in the ports, harbors, bays, enclosed sea areas, or the three-mile territorial sea along the coasts of these land areas, whether or not the applicant has been lawfully admitted to the United States as a permanent resident;

(d) Has been, for at least one year prior to filing the application for naturalization, and continues to be, of good moral character, attached to the principles of the Constitution of the United States, and favorably disposed toward the good order and happiness of the United States; and

(e) Has complied with all other requirements for naturalization as provided in part 316 of this chapter, except that:

(1) The applicant may be of any age;

(2) The applicant is not required to satisfy the residence requirements under § 316.2 (a)(3) through (a)(6) of this chapter; and

(3) The applicant may be naturalized even if an outstanding notice to appear pursuant to 8 CFR part 239 (including a charging document issued to commence proceedings under sections 236 or 242 of the Act prior to April 1, 1997) exists.

[56 FR 50493, Oct. 7, 1991, as amended at 58 FR 49913, Sept. 24, 1993; 62 FR 10395, Mar. 6, 1997; 75 FR 2787, Jan. 19, 2010]

### § 329.3 [Reserved]

### § 329.4 Application and evidence.

(a) *Application.* An applicant for naturalization under section 329 of the Act

must submit an application on the form prescribed by USCIS in accordance with the form instructions and as provided in 8 CFR 316.4.

(b) *Evidence.* The applicant's eligibility for naturalization under 8 CFR 329.2(a), (b), or (c)(2) will be established only by a certification of honorable service by the executive department under which the applicant served or is serving.

[76 FR 53800, Aug. 29, 2011]

## **PART 330—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: SEAMEN**

Sec.

330.1 Eligibility.

330.2 Application.

AUTHORITY: 8 U.S.C. 1103, 1443.

### **§ 330.1 Eligibility.**

To be eligible for naturalization under section 330 of the Act, an applicant must establish that he or she:

(a) Has been lawfully admitted as a permanent resident of the United States;

(b) Has served honorably or with good conduct, during such periods of lawful residence, in a capacity other than as a member of the Armed Forces of the United States, on board:

(1) A vessel operated by the United States, or an agency thereof, the full legal and equitable title to which is in the United States; or

(2) A vessel, whose home port is the United States, and

(i) Which is registered under the laws of the United States; or

(ii) The full legal and equitable title to which is in a citizen of the United States, or a corporation organized under the laws of any of the several States of the United States;

(c) Served in the capacity specified in paragraph (b) of this section within five years immediately preceding the date on which the applicant filed the application for naturalization, or on which the alien is examined, if the application was filed early pursuant to section 334(a) of the Act.

(d) Has been, during the five years preceding the filing of the application for naturalization, or the examination

on the application if the application was filed early under section 334(a) of the Act, and continues to be, of good moral character, attached to the principles of the Constitution of the United States, and favorably disposed toward the good order and happiness of the United States.

(1) An applicant is presumed to satisfy the requirements of this paragraph during periods of service in accordance with paragraphs (b) and (c) of this section, as reflected by the records and certificates submitted by the applicant under § 330.2(b).

(2) An applicant must demonstrate that he or she satisfies the requirements of this paragraph for those required periods when that applicant did not perform service in accordance with paragraphs (b) and (c) of this section; and

(e) Has complied with all other requirements for naturalization as provided in part 316 of this chapter, except that, for purposes of the residence requirements under paragraphs § 316.2 (a)(3) and (a)(4) of this chapter, service satisfying the conditions of this section shall be considered as residence and physical presence within the United States.

[56 FR 50493, Oct. 7, 1991]

### **§ 330.2 Application.**

(a) An applicant for naturalization under section 330 of the Act must submit an application on the form designated by USCIS.

(b) An applicant under this part must submit authenticated copies of the records and certificates of either:

(1) The Executive Department or Agencies having custody of records reflecting the applicant's service on a vessel in United States Government Service, if the applicant provided service under § 330.1(b)(1); or

(2) The masters of those vessels maintaining a home port in the United States, and either registered under the laws of the United States or owned by United States citizens or corporations, if the applicant provided service under § 330.1(b)(2).

[56 FR 50493, Oct. 7, 1991, as amended at 74 FR 26941, June 5, 2009; 76 FR 53800, Aug. 29, 2011]

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**PART 331—ALIEN ENEMIES; NATURALIZATION UNDER SPECIFIED CONDITIONS AND PROCEDURES**

Sec.

331.1 Definitions.

331.2 Eligibility.

331.3 Investigation.

331.4 Procedures.

AUTHORITY: 8 U.S.C. 1103, 1443.

SOURCE: 56 FR 50494, Oct. 7, 1991, unless otherwise noted.

**§ 331.1 Definitions.**

As used in this part:

*Alien enemy* means any person who is a native, citizen, subject or denizen of any country, state or sovereignty with which the United States is at war, for as long as the United States remains at war, as determined by proclamation of the President or resolution of Congress.

*Denizen* includes, but is not limited to, any person who has been admitted to residence and is entitled to certain rights in a country other than the one of the person's nationality. A person holding a status in another country equivalent to that of a lawful permanent resident in the United States would be considered to be a denizen.

**§ 331.2 Eligibility.**

An alien enemy may be naturalized as a citizen of the United States under section 331 of the Act if:

(a) The alien's application for naturalization is pending at the beginning of the state of war, or the Service has granted the alien an exception from the classification as an alien enemy after conducting an investigation in accordance with § 331.3;

(b) The alien's loyalty to the United States is fully established upon investigation by the Service in accordance with § 331.3; and

(c) The alien is otherwise entitled to admission to citizenship.

**§ 331.3 Investigation.**

The Service shall conduct a full investigation of any alien enemy whose application for naturalization is pending upon declaration of war or at any time thereafter. This investigation may take place either prior to or after

the examination on the application. This investigation shall encompass, but not be limited to, the applicant's loyalty to the United States and attachment to the country, state, or sovereignty with which the United States is at war.

**§ 331.4 Procedures.**

(a) Upon determining that an applicant for naturalization is an alien enemy, the Service shall notify the applicant in writing of its determination. Upon service of this notice to the applicant, the provisions of section 336(b) of the Act will no longer apply to such applicant, until that applicant is no longer classifiable as an alien enemy.

(b) Upon completion of the investigation described in § 331.3, if the Service concludes that the applicant's loyalty and attachment to the United States have been fully established, the application may be granted.

**PART 332—NATURALIZATION ADMINISTRATION**

Sec.

332.1 Designation of USCIS employees to administer oaths and conduct examinations and hearings.

332.2–332.4 [Reserved]

332.5 Official forms for use by clerks of court.

AUTHORITY: 8 U.S.C. 1103, 1443, 1447.

**§ 332.1 Designation of USCIS employees to administer oaths and conduct examinations and hearings.**

(a) *Examinations.* All USCIS officers are hereby designated to conduct the examination for naturalization required under section 335 of the Act, provided that each officer so designated has received appropriate training.

(b) *Hearings.* Section 336 of the Act authorizes USCIS officers who are designated under paragraph (a) of this section to conduct hearings under that section.

(c) *Depositions.* All USCIS officers who are designated under paragraph (a) of this section are hereby designated to take depositions in matters relating to the administration of naturalization and citizenship laws.

## §§ 332.2–332.4

(d) *Oaths and affirmations.* All USCIS officers who are designated under paragraph (a) of this section are hereby designated to administer oaths or affirmations except for the oath of allegiance as provided in 8 CFR 337.2.

[76 FR 53800, Aug. 29, 2011]

## §§ 332.2–332.4 [Reserved]

### § 332.5 Official forms for use by clerks of court.

(a) *Official forms essential to exercise of jurisdiction.* Before exercising jurisdiction in naturalization proceedings, the naturalization court shall direct the clerk of such court upon written application to obtain from the Service, in accordance with section 310(c) of the Immigration and Nationality Act, proper forms, records, books, and supplies required in naturalization proceedings. Such jurisdiction may not be exercised until such official forms, records, and books have been supplied to such court. Only such forms as are supplied shall be used in naturalization proceedings. Where sessions of the court are held at different places, the judge of such court may require the clerk to obtain a separate supply of official forms, records and books for each such place.

(b) *Official forms prescribed for use of clerks of naturalization courts.* Clerks of courts shall use only the forms listed in § 499.1 of this chapter in the exercise of naturalization jurisdiction.

(c) *Initial application for official forms.* Whenever the initial application for forms, records, books and supplies is made by a State court of record, it shall be accompanied by a certificate of the Attorney General of the State, certifying that the said court is a court of record, having a seal, a clerk, and jurisdiction in actions at law or in equity, or at law and in equity, in which the amount in controversy is unlimited.

(d) *Subsequent application for use of official forms.* Included with the initial supply of official forms, records, and books furnished to the various courts by the Service shall be Form N-3 entitled “Requisition for Forms and Binders,” and thereafter such forms shall be used by clerks of courts in making requisition for forms, records, books, and

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supplies for use in naturalization proceedings in their respective courts.

[22 FR 9817, Dec. 6, 1957. Redesignated and amended at 56 FR 50495, Oct. 7, 1991]

## PART 333—PHOTOGRAPHS

Sec.

333.1 Description of required photographs.

333.2 Attachment of photographs to documents.

AUTHORITY: 8 U.S.C. 1103, 1443.

### § 333.1 Description of required photographs.

(a) Every applicant who is required to provide photographs under section 333 of the Act must do so as prescribed by USCIS in its form instructions.

(b) The applicant, except in the case of a child or other person physically incapable of signing his or her name, shall sign each copy of the photograph on the front of the photograph with his or her full true name, in such manner as not to obscure the features. An applicant unable to write may make the signature by a mark. An applicant for naturalization must sign the photographs in the English language, unless the applicant is exempt from the English language requirement of part 312 of this chapter and is unable to sign in English, in which case the photographs may be signed in any language.

(c)(1) If a child is unable to sign his or her name, the photographs must be signed by a parent or guardian, the signature reading “(name of child) by (name of parent or guardian).”

(2) If an adult is physically unable to sign or make a mark, a guardian or the Service employee conducting the interview will sign the photographs as provided in paragraph (c)(1) of this section.

(d) The photographs must be signed when submitted with an application if the instructions accompanying the application so require. If signature is not required by the instructions, the photographs are to be submitted without being signed and shall be signed at such later time during the processing of the application as may be appropriate.

[56 FR 50495, Oct. 7, 1991, as amended at 76 FR 53801, Aug. 29, 2011]

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### § 333.2 Attachment of photographs to documents.

A photograph of the applicant must be securely and permanently attached to each certificate of naturalization or citizenship, or to any other document that requires a photograph, in a manner prescribed by USCIS.

[76 FR 53801, Aug. 29, 2011]

## PART 334—APPLICATION FOR NATURALIZATION

Sec.

334.1 Filing of application for naturalization.

334.2 Application for naturalization.

334.3 [Reserved]

334.4 Investigation and report if applicant is sick or disabled.

334.5 Amendment of application for naturalization; reopening proceedings.

334.6–334.10 [Reserved]

334.11 Declaration of intention.

334.12–334.15 [Reserved]

AUTHORITY: 8 U.S.C. 1103, 1443; 8 CFR part 2.

### § 334.1 Filing of application for naturalization.

Any person who is an applicant under sections 316, 319, 324, 325, 327, 328, 329, or 330 of the Act and the corresponding parts of this chapter, may apply for naturalization in accordance with the procedures prescribed in this chapter in accordance with the instructions on the form.

[56 FR 50496, Oct. 7, 1991, as amended at 66 FR 32147, June 13, 2001; 74 FR 26941, June 5, 2009]

### § 334.2 Application for naturalization.

(a) An applicant may file an application for naturalization with required initial evidence in accordance with the general form instructions for naturalization. The applicant must include the fee as required in 8 CFR 103.7(b)(1).

(b) An application for naturalization may be filed up to 90 days prior to the completion of the required period of residence, which may include the three-month period of residence required to establish jurisdiction under section 316(a) or 319(a) of the Act.

[56 FR 50496, Oct. 7, 1991, as amended at 59 FR 48780, Sept. 20, 1993; 66 FR 32147, June 13, 2001; 76 FR 53801, Aug. 29, 2011]

### § 334.3 [Reserved]

### § 334.4 Investigation and report if applicant is sick or disabled.

Whenever it appears that an applicant for naturalization may be unable, because of sickness or other disability, to appear for the initial examination on the application or for any subsequent interview, the district director shall cause an investigation to be conducted to determine the circumstances surrounding the sickness or disability. The district director shall determine, based on available medical evidence, whether the sickness or disability is of a nature which so incapacitates the applicant as to prevent the applicant's appearance at a Service office having jurisdiction over the applicant's place of residence. If so, the district director shall designate another place where the applicant may appear for the requisite naturalization proceedings.

[58 FR 49913, Sept. 24, 1993]

### § 334.5 Amendment of application for naturalization; reopening proceedings.

(a) *Clerical amendments*—(1) *By applicant*. An applicant may request that the application for naturalization be amended either prior to or subsequent to the administration of the oath of allegiance.

(2) *By Service*. The Service may amend, at any time, an application for naturalization when in receipt of information that clearly indicates that a clerical error has occurred.

(3) *Amendment procedure*. Any amendment will be limited to the correction of clerical errors arising from oversight or omission. If the amendment is approved, the amended application shall be filed with the original application for naturalization.

(b) *Substantive amendments*. Any substantive amendments which affect the jurisdiction or the decision on the merits of the application will not be authorized. When the Service is in receipt of any information that would indicate that an application for naturalization should not have been granted on the merits, the Service may institute proceedings to reopen the application before admission to citizenship, or to revoke the naturalization of a person

## §§ 334.6–334.10

who has been admitted to citizenship, in accordance with section 340 of the Act and §335.5 of this chapter.

[56 FR 50496, Oct. 7, 1991]

## §§ 334.6–334.10 [Reserved]

### § 334.11 Declaration of intention.

(a) *Application.* Any person who is a lawful permanent resident over 18 years of age may file an application for a declaration of intention to become a citizen of the United States while present in the United States. Such application, with the requisite fee, shall be filed on the form specified by USCIS, in accordance with the form instructions.

(b) *Approval.* If approved, USCIS will retain the application in the file and advise the applicant of the action taken.

(c) *Denial.* If an application is denied, the applicant shall be notified in writing of the reasons for denial. No appeal shall lie from this decision.

[58 FR 49913, Sept. 24, 1993, as amended at 74 FR 26941, June 5, 2009; 76 FR 53801, Aug. 29, 2011]

## §§ 334.12–334.15 [Reserved]

## PART 335—EXAMINATION ON APPLICATION FOR NATURALIZATION

Sec.

335.1 Investigation of applicant.

335.2 Examination of applicant.

335.3 Determination on application; continuance of examination.

335.4 Use of record of examination.

335.5 Receipt of derogatory information after grant.

335.6 Failure to appear for examination.

335.7 Failure to prosecute application after initial examination.

335.8 [Reserved]

335.9 Transfer of application.

335.10 Withdrawal of application.

AUTHORITY: 8 U.S.C. 1103, 1443, 1447.

### § 335.1 Investigation of applicant.

Subsequent to the filing of an application for naturalization, the Service shall conduct an investigation of the applicant. The investigation shall consist, at a minimum, of a review of all pertinent records, police department checks, and a neighborhood investiga-

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tion in the vicinities where the applicant has resided and has been employed, or engaged in business, for at least the five years immediately preceding the filing of the application. The district director may waive the neighborhood investigation of the applicant provided for in this paragraph.

[56 FR 50497, Oct. 7, 1991]

### § 335.2 Examination of applicant.

(a) *General.* Subsequent to the filing of an application for naturalization, each applicant shall appear in person before a USCIS officer designated to conduct examinations pursuant to 8 CFR 332.1. The examination shall be uniform throughout the United States and shall encompass all factors relating to the applicant's eligibility for naturalization. The applicant may request the presence of an attorney or representative who has filed an appearance in accordance with part 292 of this chapter.

(b) *Completion of criminal background checks before examination.* USCIS will notify applicants for naturalization to appear before a USCIS officer for initial examination on the naturalization application only after the USCIS has received a definitive response from the Federal Bureau of Investigation that a full criminal background check of an applicant has been completed. A definitive response that a full criminal background check on an applicant has been completed includes:

(1) Confirmation from the Federal Bureau of Investigation that an applicant does not have an administrative or a criminal record;

(2) Confirmation from the Federal Bureau of Investigation that an applicant has an administrative or a criminal record; or

(3) Confirmation from the Federal Bureau of Investigation that the fingerprint data submitted for the criminal background check has been rejected.

(c) *Procedure.* Prior to the beginning of the examination, USCIS shall make known to the applicant the official capacity in which the officer is conducting the examination. The applicant shall be questioned, under oath or affirmation, in a setting apart from the

public. Whenever necessary, the examining officer shall correct written answers in the application for naturalization to conform to the oral statements made under oath or affirmation. USCIS shall maintain, for the record, brief notations of the examination for naturalization. At a minimum, the notations shall include a record of the test administered to the applicant on English literacy and basic knowledge of the history and government of the United States. USCIS may have a stenographic, mechanical, electronic, or videotaped transcript made, or may prepare an affidavit covering the testimony of the applicant. The questions to the applicant shall be repeated in different form and elaborated, if necessary, until the officer conducting the examination is satisfied that the applicant either fully understands the questions or is unable to understand English. The applicant and USCIS shall have the right to present such oral or documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(d) *Witnesses.* Witnesses, if called, shall be questioned under oath or affirmation to discover their own credibility and competency, as well as the extent of their personal knowledge of the applicant and his or her qualifications to become a naturalized citizen.

(1) *Issuance of subpoenas.* Subpoenas requiring the attendance of witnesses or the production of documentary evidence, or both, may be issued by the examining officer upon his or her own volition, or upon written request of the applicant or his or her attorney or representative. Such written request shall specify, as nearly as possible, the relevance, materiality, and scope of the testimony or documentary evidence sought and must show affirmatively that the testimony or documentary evidence cannot otherwise be produced. The examining officer shall document in the record his or her refusal to issue a subpoena at the request of the applicant.

(2) *Service of subpoenas.* Subpoenas will be issued on the form designated by USCIS and a record will be made of service. The subpoena may be served by any person over 18 years of age, not a

party to the case, designated to make such service by USCIS.

(3) *Witness fees.* Mileage and fees for witnesses subpoenaed under this section shall be paid by the party at whose instance the subpoena is issued, at rates allowed and under conditions prescribed by the Service. Before issuing a subpoena, the officer may require the deposit of an amount adequate to cover the fees and mileage involved.

(4) *Failure to appear.* If the witness subpoenaed neglects or refuses to testify or to produce documentary evidence as directed by the subpoena, the district director shall request that the United States Attorney for the proper district report such neglect or refusal to any District Court of the United States, and file a motion in such court for an order directing the witness to appear and to testify and produce the documentary evidence described in the subpoena.

(5) *Extraterritorial testimony.* The testimony of a witness may be taken outside the United States. The witness's name and address shall be sent to the Service office abroad which has jurisdiction over the witness's residence. The officer taking the statement shall be given express instructions regarding any aspect of the case which may require special development or emphasis during the interrogation of the witness.

(e) *Record of examination.* At the conclusion of the examination, all corrections made on the application form and all supplemental material shall be consecutively numbered and listed in the space provided on the applicant's affidavit contained in the application form. The affidavit must then be subscribed and sworn to, or affirmed, by the applicant and signed by the USCIS officer. The affidavit shall be executed under the following oath (or affirmation): "I swear (affirm) and certify under penalty of perjury under the laws of the United States of America that I know that the contents of this application for naturalization subscribed by me, and the evidence submitted with it, are true and correct to the best of my knowledge and belief." Evidence received by the officer shall

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be placed into the record for determination of the case. All documentary or written evidence shall be properly identified and introduced into the record as exhibits by number, unless read into the record. A deposition or statement taken by a USCIS officer during the initial examination or any subsequent examination shall be included as part of the record on the application.

(f) *Use of interpreter.* If the use of an interpreter is authorized pursuant to 8 CFR 312.4, the examining officer shall note on the application the use and identity of any interpreter. If the USCIS officer is proficient in the applicant's native language, the USCIS officer may conduct the examination in that language with the consent of the applicant.

[56 FR 50497, Oct. 7, 1991, as amended at 58 FR 49913, Sept. 24, 1993; 63 FR 12987, 12988, Mar. 17, 1998; 76 FR 53801, Aug. 29, 2011]

### § 335.3 Determination on application; continuance of examination.

(a) USCIS shall grant the application if the applicant has complied with all requirements for naturalization under this chapter. A decision to grant or deny the application shall be made at the time of the initial examination or within 120-days after the date of the initial examination of the applicant for naturalization under § 335.2. The applicant shall be notified that the application has been granted or denied and, if the application has been granted, of the procedures to be followed for the administration of the oath of allegiance pursuant to part 337 of this chapter.

(b) Rather than make a determination on the application, USCIS may continue the initial examination on an application for one reexamination, to afford the applicant an opportunity to overcome deficiencies on the application that may arise during the examination. The officer must inform the applicant in writing of the grounds to be overcome or the evidence to be submitted. The applicant shall not be required to appear for a reexamination earlier than 60 days after the first examination. However, the reexamination on the continued case shall be scheduled within the 120-day period

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after the initial examination, except as otherwise provided under § 312.5(b) of this chapter. If the applicant is unable to overcome the deficiencies in the application, the application shall be denied pursuant to § 336.1 of this chapter.

[56 FR 50497, Oct. 7, 1991, as amended at 58 FR 49914, Sept. 24, 1993; 76 FR 53801, Aug. 29, 2011]

### § 335.4 Use of record of examination.

In the event that an application is denied, the record of the examination on the application for naturalization, including the executed and corrected application form and supplements, affidavits, transcripts of testimony, documents, and other evidence, shall be submitted to the USCIS officer described in 8 CFR 332.1 of this chapter to conduct hearings on denials of applications for naturalization in accordance with part 336 of this chapter. The record of the examination shall be used for examining the petitioner and witnesses, if required to properly dispose of issues raised in the matter.

[56 FR 50498, Oct. 7, 1991, as amended at 76 FR 53801, Aug. 29, 2011]

### § 335.5 Receipt of derogatory information after grant.

In the event that USCIS receives derogatory information concerning an applicant whose application has already been granted as provided in § 335.3(a) of this chapter, but who has not yet taken the oath of allegiance as provided in part 337 of this chapter, USCIS shall remove the applicant's name from any list of granted applications or of applicants scheduled for administration of the oath of allegiance, until such time as the matter can be resolved. USCIS shall notify the applicant in writing of the receipt of the specific derogatory information, with a motion to reopen the previously adjudicated application, giving the applicant 15 days to respond. If the applicant overcomes the derogatory information, the application will be granted and the applicant will be scheduled for administration of the oath of allegiance. Otherwise the motion to reopen will be granted and the application will



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be denied pursuant to § 336.1 of this chapter.

[56 FR 50498, Oct. 7, 1991, as amended at 58 FR 49914, Sept. 24, 1993; 76 FR 53801, Aug. 29, 2011]

### § 335.6 Failure to appear for examination.

(a) An applicant for naturalization shall be deemed to have abandoned his or her application if he or she fails to appear for the examination pursuant to § 335.3 and fails to notify USCIS of the reason for non-appearance within 30 days of the scheduled examination. Such notification shall be in writing and contain a request for rescheduling of the examination. In the absence of a timely notification, USCIS may administratively close the application without making a decision on the merits.

(b) An applicant may reopen an administratively closed application by submitting a written request to USCIS within one (1) year from the date the application was closed. Such reopening shall be without additional fee. The date of the request for reopening shall be the date of filing of the application for purposes of determining eligibility for naturalization.

(c) If the applicant does not request reopening of an administratively closed application within one year from the date the application was closed, USCIS will consider that application to have been abandoned, and shall dismiss the application without further notice to the applicant.

[58 FR 49914, Sept. 24, 1993, as amended at 60 FR 6651, Feb. 3, 1995; 76 FR 53801, Aug. 29, 2011]

### § 335.7 Failure to prosecute application after initial examination.

An applicant for naturalization who has appeared for the examination on his or her application as provided in 8 CFR 335.2 will be considered as failing to prosecute such application if he or she, without good cause being shown, either failed to excuse an absence from a subsequently required appearance, or fails to provide within a reasonable period of time such documents, information, or testimony deemed by USCIS to be necessary to establish his or her eligibility for naturalization. USCIS will deliver notice of requests for appearance or evidence as provided in 8 CFR

103.8. In the event that the applicant fails to respond within 30 days of the date of notification, USCIS will adjudicate the application on the merits pursuant to 8 CFR 336.1.

[76 FR 53801, Aug. 29, 2011]

### § 335.8 [Reserved]

### § 335.9 Transfer of application.

(a) *Request for transfer of application.* An applicant who, after filing an application for naturalization, changes residence, or plans to change residence within three months, may request, in writing, that a pending application be transferred from the current USCIS office to the USCIS office having jurisdiction over the applicant's new place of residence. The request shall be submitted to the office where the application was originally filed. The request shall include the applicant's name, alien registration number, date of birth, complete current address including name of the county, complete address at the time of filing the application, reason for the request to transfer the application, and the date the applicant moved or intends to move to the new jurisdiction.

(b) *Discretion to authorize transfer.* The USCIS may authorize the transfer of an application for naturalization after such application has been filed. In the event that the USCIS does not consent to the transfer of the application, the application shall be adjudicated on its merits by USCIS office retaining jurisdiction. If upon such adjudication the application is denied, the written decision pursuant to § 336.1 of this chapter shall also address the reason(s) for USCIS's decision not to consent to the transfer request.

[56 FR 50498, Oct. 7, 1991, as amended at 58 FR 49914, Sept. 24, 1993; 76 FR 53801, Aug. 29, 2011; 76 FR 73477, Nov. 29, 2011]

### § 335.10 Withdrawal of application.

An applicant may request, in writing, that his or her application, filed with USCIS, be withdrawn. If USCIS consents to the withdrawal, the application will be denied without further notice to the applicant and without prejudice to any future application. The withdrawal by the applicant will constitute a waiver of any review pursuant

to part 336 of this chapter. If USCIS does not consent to the withdrawal, the application for naturalization shall be adjudicated on its merits.

[56 FR 50498, Oct. 7, 1991, as amended at 76 FR 53801, Aug. 29, 2011]

## **PART 336—HEARINGS ON DENIALS OF APPLICATIONS FOR NATURALIZATION**

Sec.

336.1 Denial after section 335 examination.

336.2 USCIS hearing.

336.3–336.8 [Reserved]

336.9 Judicial review of denial determinations on applications for naturalization.

AUTHORITY: 8 U.S.C. 1103, 1443, 1447, 1448.

SOURCE: 56 FR 50499, Oct. 7, 1991, unless otherwise noted.

### **§ 336.1 Denial after section 335 examination.**

(a) After completing all examination procedures contained in part 335 of this chapter and determining to deny an application for naturalization, USCIS will serve a written notice of denial upon an applicant for naturalization no later than 120 days after the date of the applicant's first examination on the application.

(b) A notice of denial shall be prepared in a written, narrative format, and shall recite, in clear concise language, the pertinent facts upon which the determination was based, the specific legal section or sections applicable to the finding of ineligibility, and the conclusions of law reached by the examining officer in rendering the decision. Such notice of denial shall also contain a specific statement of the applicant's right either to accept the determination of the examining officer, or request a hearing before an immigration officer.

(c) Service of the notice of denial must be by personal service as described in 8 CFR 103.8, or upon the attorney or representative of record as provided in part 292 of this chapter.

[56 FR 50499, Oct. 7, 1991, as amended at 76 FR 53802, Aug. 29, 2011]

### **§ 336.2 USCIS hearing.**

(a) The applicant, or his or her authorized representative, may request a

hearing on the denial of the applicant's application for naturalization by filing a request with USCIS within thirty days after the applicant receives the notice of denial.

(b) Upon receipt of a timely request for a hearing, USCIS will schedule a review hearing, within a reasonable period of time not to exceed 180 days from the date upon which the appeal is filed. The review will be with an officer other than the officer who conducted the original examination or who rendered determination upon which the hearing is based, and who is classified at a grade level equal to or higher than the grade of the examining officer. The reviewing officer will have the authority and discretion to review the application for naturalization, to examine the applicant, and either to affirm the findings and determination of the original examining officer or to re-determine the original decision in whole or in part. The reviewing officer will also have the discretion to review any administrative record which was created as part of the examination procedures as well USCIS files and reports. He or she may receive new evidence or take such additional testimony as may be deemed relevant to the applicant's eligibility for naturalization or which the applicant seeks to provide. Based upon the complexity of the issues to be reviewed or determined, and upon the necessity of conducting further examinations with respect to essential naturalization requirements, such as literacy or civics knowledge, the reviewing immigration officer may, in his or her discretion, conduct a full *de novo* hearing or may utilize a less formal review procedure, as he or she deems reasonable and in the interest of justice.

(c) *Improperly filed request for hearing.*

(1) *Request for hearing filed by a person or entity not entitled to file.* (i) *Rejection without refund of filing fee.* A request for hearing filed by a person or entity who is not entitled to file such a request must be rejected as improperly filed. In such a case, any filing fee will not be refunded.

(ii) *Request for hearing by attorney or representative without proper Form G–28.* If a request for hearing is filed by an attorney or representative who has not

properly filed a notice of entry of appearance as attorney or representative entitling that person to file the request for hearing, the appeal will be considered as improperly filed. In such a case, any filing fee will not be refunded regardless of the action taken. The reviewing official will ask the attorney or representative to submit a proper notice of entry within 15 days of the request. If such notice is not submitted within the time allowed, the official may, on his or her own motion, under 8 CFR 103.5(a)(5)(i), make a new decision favorable to the affected party without notifying the attorney or representative. The request for hearing may be considered properly filed as of its original filing date if the attorney or representative submits a properly executed notice entitling that person to file the request for hearing.

(2) *Untimely request for hearing.* (i) *Rejection without refund of filing fee.* A request for hearing which is not filed within the time period allowed must be rejected as improperly filed. In such a case, any filing fee will not be refunded.

(ii) *Untimely request for hearing treated as motion.* If an untimely request for hearing meets the requirements of a motion to reopen as described in 8 CFR 103.5(a)(2) or a motion to reconsider as described in 8 CFR 103.5(a)(3), the request for hearing must be treated as a motion and a decision must be made on the merits of the case.

[76 FR 53802, Aug. 29, 2011]

#### §§ 336.3–336.8 [Reserved]

#### § 336.9 Judicial review of denial determinations on applications for naturalization.

(a) *General.* The provisions in part 310 of this chapter shall provide the sole and exclusive procedures for requesting judicial review of final determinations on applications for naturalization made pursuant to section 336(a) of the Act and the provisions of this chapter by USCIS on or after October 1, 1991.

(b) *Filing a petition.* Under these procedures, an applicant must file a petition for review in the United States District Court having jurisdiction over his or her place of residence, in accordance with Chapter 7 of Title 5, United

States Code, within a period of not more than 120 days after the USCIS final determination. The petition for review must be brought against USCIS, and service of the petition for review must be made upon DHS and upon the USCIS office where the hearing was held pursuant to 8 CFR 336.2.

(c) *Standard of review.* The review will be *de novo*, and the court will make its own findings of fact and conclusions of law. The court may also conduct, at the request of the petitioner, a hearing *de novo* on the application for naturalization.

(d) *Exhaustion of remedies.* A USCIS determination denying an application for naturalization under section 335(a) of the Act shall not be subject to judicial review until the applicant has exhausted those administrative remedies available to the applicant under section 336 of the Act. Every petition for judicial review shall state whether the validity of the final determination to deny an application for naturalization has been upheld in any prior administrative proceeding and, if so, the nature and date of such proceeding and the forum in which such proceeding took place.

[56 FR 50499, Oct. 7, 1991, as amended at 76 FR 53802, Aug. 29, 2011]

### PART 337—OATH OF ALLEGIANCE

Sec.

337.1 Oath of allegiance.

337.2 Oath administered by USCIS or EOIR.

337.3 Expedited administration of oath of allegiance.

337.4 When requests for change of name granted.

337.5–337.6 [Reserved]

337.7 Information and assignment of individuals under exclusive jurisdiction.

337.8 Oath administered by the courts.

337.9 Effective date of naturalization.

337.10 Failure to appear for oath administration ceremony.

AUTHORITY: 8 U.S.C. 1103, 1443, 1448; 8 CFR part 2.

#### § 337.1 Oath of allegiance.

(a) *Form of oath.* Except as otherwise provided in the Act and after receiving notice from the district director that such applicant is eligible for naturalization pursuant to § 335.3 of this

chapter, an applicant for naturalization shall, before being admitted to citizenship, take in a public ceremony held within the United States the following oath of allegiance, to a copy of which the applicant shall affix his or her signature:

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God.

(b) *Alteration of form of oath; affirmation in lieu of oath.* In those cases in which a petitioner or applicant for naturalization is exempt from taking the oath prescribed in paragraph (a) of this section in its entirety, the inapplicable clauses shall be deleted and the oath shall be taken in such altered form. When a petitioner or applicant for naturalization, by reason of religious training and belief (or individual interpretation thereof), or for other reasons of good conscience, cannot take the oath prescribed in paragraph (a) of this section with the words “on oath” and “so help me God” included, the words “and solemnly affirm” shall be substituted for the words “on oath,” the words “so help me God” shall be deleted, and the oath shall be taken in such modified form. Any reference to ‘oath of allegiance’ in this chapter is understood to mean equally ‘affirmation of allegiance’ as described in this paragraph.

(c) *Obligations of oath.* A petitioner or applicant for naturalization shall, before being naturalized, establish that it is his or her intention, in good faith, to assume and discharge the obligations of the oath of allegiance, and that his or her attitude toward the Constitution and laws of the United States ren-

ders him or her capable of fulfilling the obligations of such oath.

(d) *Renunciation of title or order of nobility.* A petitioner or applicant for naturalization who has borne any hereditary title or has been of any of the orders of nobility in any foreign state shall, in addition to taking the oath of allegiance prescribed in paragraph (a) of this section, make under oath or affirmation in public an express renunciation of such title or order of nobility, in the following form:

(1) I further renounce the title of (give title or titles) which I have heretofore held; or

(2) I further renounce the order of nobility (give the order of nobility) to which I have heretofore belonged.

[22 FR 9824, Dec. 6, 1957, as amended at 24 FR 2584, Apr. 3, 1959; 32 FR 13756, Oct. 3, 1967; 56 FR 50499, Oct. 7, 1991]

#### § 337.2 Oath administered by USCIS or EOIR.

(a) *Public ceremony.* An applicant for naturalization who has elected to have his or her oath of allegiance administered by USCIS or an immigration judge and is not subject to the exclusive oath administration authority of an eligible court pursuant to section 310(b) of the Act must appear in person in a public ceremony, unless such appearance is specifically excused under the terms and conditions set forth in this part. Such ceremony will be held at a time and place designated by USCIS or EOIR within the United States (or abroad as permitted for certain applicants in accordance with 8 U.S.C. 1443a) and within the jurisdiction where the application for naturalization was filed, or into which the application for naturalization was transferred pursuant to 8 CFR 335.9. Naturalization ceremonies will be conducted at regular intervals as frequently as necessary to ensure timely naturalization, but in all events at least once monthly where it is required to minimize unreasonable delays. Naturalization ceremonies will be presented in such a manner as to preserve the dignity and significance of the occasion.

(b) *Authority to administer oath of allegiance.* The Secretary may delegate authority to administer the oath of allegiance prescribed in section 337 of the Act to such officials of DHS and to immigration judges or officials designated by the Attorney General as may be necessary for the efficient administration of the naturalization program.

(c) *Execution of questionnaire.* Immediately prior to being administered the oath of allegiance, each applicant must complete the questionnaire on the form designated by USCIS. USCIS will review each completed questionnaire and may further question the applicant regarding the responses provided. If derogatory information is revealed, USCIS will remove the applicant's name from the list of eligible persons as provided in 8 CFR 335.5 and he or she will not be administered the oath.

[76 FR 53802, Aug. 29, 2011]

**§ 337.3 Expedited administration of oath of allegiance.**

(a) An applicant may be granted an expedited oath administration ceremony by either the court or USCIS upon demonstrating sufficient cause. In determining whether to grant an expedited oath administration ceremony, the court or USCIS shall consider special circumstances of a compelling or humanitarian nature. Special circumstances may include but are not limited to:

- (1) The serious illness of the applicant or a member of the applicant's family;
  - (2) Permanent disability of the applicant sufficiently incapacitating as to prevent the applicant's personal appearance at a scheduled ceremony;
  - (3) The developmental disability or advanced age of the applicant which would make appearance at a scheduled ceremony inappropriate; or
  - (4) Urgent or compelling circumstances relating to travel or employment determined by the court or USCIS to be sufficiently meritorious to warrant special consideration.
- (b) Courts exercising exclusive authority may either hold an expedited oath administration ceremony or refer the applicant to USCIS in order for either the Immigration Judge or USCIS

to conduct an oath administration ceremony, if an expedited judicial oath administration ceremony is impractical. The court shall inform USCIS in writing of its decision to grant the applicant an expedited oath administration ceremony and that the court has relinquished exclusive jurisdiction as to that applicant.

(c) All requests for expedited administration of the oath of allegiance shall be made in writing to either the court or USCIS. Such requests shall contain sufficient information to substantiate the claim of special circumstances to permit either the court or USCIS to properly exercise the discretionary authority to grant the relief sought. The court or USCIS may seek verification of the validity of the information provided in the request. If the applicant submits a written request to USCIS, but is awaiting an oath administration ceremony by a court pursuant to § 337.8, USCIS promptly shall provide the court with a copy of the request without reaching a decision on whether to grant or deny the request.

[60 FR 37804, July 24, 1995, as amended at 76 FR 53803, Aug. 29, 2011]

**§ 337.4 When requests for change of name granted.**

When the court has granted the petitioner's change of name request, the petitioner shall subscribe his or her new name to the written oath of allegiance.

[56 FR 50500, Oct. 7, 1991]

**§§ 337.5–337.6 [Reserved]**

**§ 337.7 Information and assignment of individuals under exclusive jurisdiction.**

(a) No later than at the time of the examination on the application pursuant to § 335.2 of this chapter, an employee of USCIS shall advise the applicant of his or her right to elect the site for the administration of the oath of allegiance, subject to the exclusive jurisdiction provision of § 310.3(d) of this chapter. In order to assist the applicant in making an informed decision, USCIS shall advise the applicant of the upcoming Immigration Judge or USCIS conducted and judicial ceremonies at

which the applicant may appear, if found eligible for naturalization.

(b) An applicant whose application has been approved by USCIS who is subject to the exclusive jurisdiction of a court pursuant to § 310.2(d) of this chapter, shall be advised of the next available court ceremony and provided with a written notice to appear at that ceremony. If the applicant is subject to the exclusive jurisdiction of more than one court exercising exclusive jurisdiction, the applicant will be informed of the upcoming ceremonies in each affected court. The applicant shall decide which court he or she wishes to administer the oath of allegiance.

[58 FR 49915, Sept. 24, 1993, as amended at 60 FR 37804, July 24, 1995; 76 FR 53803, Aug. 29, 2011]

#### **§ 337.8 Oath administered by the courts.**

(a) *Notification of election.* An applicant for naturalization not subject to the exclusive jurisdiction of 8 CFR 310.2(d) must notify USCIS at the time of the filing of, or no later than at the examination on, the application of his or her election to have the oath of allegiance administered in an appropriate court having jurisdiction over the applicant's place of residence.

(b) *Certificate of eligibility.* (1) *Exclusive jurisdiction.* In those instances falling within the exclusive jurisdiction provision of section 310(b)(1)(B) of the Act, USCIS will notify the court of the applicant's eligibility for admission to United States citizenship by notifying the clerk of the court within 10 days of the approval of the application.

(2) *Non-exclusive jurisdiction.* In those instances in which the applicant has elected to have the oath administered in a court ceremony, USCIS will notify the clerk of the court in writing that the applicant has been determined by the USCIS to be eligible for admission to United States citizenship upon taking the requisite oath of allegiance and renunciation in a public ceremony. If a scheduled hearing date is not available at the time of notification, USCIS will notify the applicant in writing that the applicant has been approved but no ceremony date is yet available.

(c) *Preparation of lists.* (1) At or prior to the oath administration ceremony,

the representative attending the ceremony will submit to the court, in duplicate, lists of persons to be administered the oath of allegiance and renunciation. After the ceremony, and after any required amendments and notations have been made to the lists, the clerk of the court will sign the lists.

(2) The originals of all court lists specified in this section will be filed permanently in the court, and the duplicates returned by the clerk of the court to USCIS. The same disposition will be made of any list presented to, but not approved by, the court.

(d) *Personal representation of the government at oath administration ceremonies.* An oath administration ceremony must be attended by a representative of USCIS who will review each completed questionnaire and may further question the applicant regarding the responses provided. If derogatory information is revealed, the USCIS representative will remove the applicant's name from the list of eligible persons as provided in 8 CFR 335.5 and the court will not administer the oath to such applicant.

(e) *Written report in lieu of personal representation.* If it is impractical for a USCIS representative to be present at a judicial oath administration ceremony, written notice of that fact will be given by the USCIS to the court. The list of persons to be administered the oath of allegiance and renunciation, forms, memoranda, and certificates will be transmitted to the clerk of the court, who will submit the appropriate lists to the court.

(f) *Withdrawal from court.* An applicant for naturalization not subject to the exclusive jurisdiction of 8 CFR 310.3(d) who has elected to have the oath administered in a court oath ceremony may, for good cause shown, request that his or her name be removed from the list of persons eligible to be administered the oath at a court oath ceremony and request that the oath be administered by an immigration judge or USCIS. Such request must be in writing to the USCIS office which granted the application and must cite the reasons for the request. USCIS will consider the good cause shown and the best interests of the applicant in making a decision. If it is determined that

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the applicant will be permitted to withdraw his or her name from the court ceremony, USCIS will give written notice to the court of the applicant's withdrawal, and the applicant will be scheduled for the next available oath ceremony, conducted by an Immigration Judge or USCIS, as if he or she had never elected the court ceremony.

[76 FR 53803, Aug. 29, 2011]

### § 337.9 Effective date of naturalization.

(a) An applicant for naturalization shall be deemed a citizen of the United States as of the date on which the applicant takes the prescribed oath of allegiance in an administrative ceremony or in a ceremony conducted by an appropriate court under § 337.8 of this chapter.

(b) [Reserved]

[56 FR 50500, Oct. 7, 1991, as amended at 60 FR 37804, July 24, 1995; 66 FR 32147, June 13, 2001; 76 FR 53803, Aug. 29, 2011]

### § 337.10 Failure to appear for oath administration ceremony.

An applicant who fails to appear without good cause for more than one oath administration ceremony for which he or she was duly notified shall be presumed to have abandoned his or her intent to be naturalized. Such presumption shall be regarded as the receipt of derogatory information, and the procedures contained in § 335.5 of this chapter shall be followed.

[58 FR 49916, Sept. 24, 1993]

## PART 338—CERTIFICATE OF NATURALIZATION

Sec.

338.1 Execution and issuance of certificate.

338.2 Execution in case name is changed.

338.3 Delivery of certificates.

338.4 [Reserved]

338.5 Correction of certificates.

338.6–338.10 [Reserved]

AUTHORITY: 8 U.S.C. 1103, 1443; 8 CFR part 2.

### § 338.1 Execution and issuance of certificate.

(a) *Issuance.* When an applicant for naturalization has taken and subscribed to the oath of allegiance in accordance with 8 CFR part 337, USCIS

will issue a Certificate of Naturalization at the conclusion of the oath administration ceremony.

(b) *Contents of certificate.* The certificate must be issued to the applicant in accordance with section 338 of the Act in his or her true, full, and correct name as it exists at the time of the administration of the oath of allegiance. The certificate must show, under “country of former nationality,” the name of the applicant's last country of citizenship, as shown in the application and USCIS records, even though the applicant may be stateless at the time of admission to citizenship.

[76 FR 53803, Aug. 29, 2011]

### § 338.2 Execution in case name is changed.

Whenever the name of an applicant has been changed by order of a court as a part of a naturalization, the clerk of court, or his or her authorized deputy, shall forward a copy of the order changing the applicant's name with the notifications required by part 339 of this chapter. The Certificate of Naturalization will be issued to the applicant in the name as changed.

[56 FR 50501, Oct. 7, 1991]

### § 338.3 Delivery of certificates.

No Certificate of Naturalization will be delivered in any case in which the naturalized person has not surrendered his or her Permanent Resident Card to USCIS. Upon a finding that the card is destroyed or otherwise unavailable, USCIS may waive the surrender of the card and the Certificate of Naturalization shall then be delivered to the naturalized person.

[56 FR 50501, Oct. 7, 1991, as amended at 63 FR 70316, Dec. 21, 1998; 76 FR 53803, Aug. 29, 2011]

### § 338.4 [Reserved]

### § 338.5 Correction of certificates.

(a) *Application.* Whenever a Certificate of Naturalization has been delivered which does not conform to the facts shown on the application for naturalization, or a clerical error was made in preparing the certificate, an application for issuance of a corrected certificate may be filed, without fee, in accordance with the form instructions.

(b) *Court-issued certificates.* If the certificate was originally issued by a clerk of court under a prior statute and USCIS finds that a correction is justified and can be made without mutilating the certificate, USCIS will authorize the issuing court to make the necessary correction and to place a dated endorsement of the court on the reverse of the certificate explaining the correction. The authorization will be filed with the naturalization record of the court, the corrected certificate will be returned to the naturalized person, and the duplicate will be endorsed to show the date and nature of the correction and endorsement made, and then returned to USCIS. No fee will be charged the naturalized person for the correction.

(c) *USCIS-issued certificates.* If the certificate was originally issued by USCIS (or its predecessor agency), and USCIS finds that a correction was justified, the correction shall be made to the certificate and a dated endorsement made on the reverse of the certificate.

(d) *Administrative actions.* When a correction made pursuant to paragraphs (b) or (c) of this section would or does result in mutilation of a certificate, USCIS will issue a replacement Certificate of Naturalization and destroy the surrendered certificate.

(e) *Data change.* The correction will not be deemed to be justified where the naturalized person later alleges that the name or date of birth which the applicant stated to be his or her correct name or date of birth at the time of naturalization was not in fact his or her name or date of birth at the time of the naturalization.

[76 FR 53803, Aug. 29, 2011]

§§ 338.6–338.10 [Reserved]

## PART 339—FUNCTIONS AND DUTIES OF CLERKS OF COURT REGARDING NATURALIZATION PROCEEDINGS

Sec.

339.1 Administration of oath of allegiance to applicants for naturalization.

339.2 Monthly reports.

339.3 Relinquishment of naturalization jurisdiction.

339.4 Binding of naturalization records.

339.5 Recordkeeping.

AUTHORITY: 8 U.S.C. 1103, 1443, 1448.

### § 339.1 Administration of oath of allegiance to applicants for naturalization.

It shall be the duty of a judge of a court that administers an oath of allegiance to ensure that such oath is administered to each applicant for naturalization who has chosen to appear before the court. The clerk of court shall issue to each person to whom such oath is administered the Certificate of Naturalization provided by USCIS in accordance with 8 CFR 338.1. The clerk of court shall provide to each person whose name was changed as part of the naturalization proceedings, pursuant to section 336(e) of the Act, certified evidence of such name change.

[58 FR 49916, Sept. 24, 1993, as amended at 76 FR 53804, Aug. 29, 2011]

### § 339.2 Monthly reports.

(a) *Oath administration ceremonies.* Clerks of court will on the first day of each month or immediately following each oath ceremony submit to USCIS a report listing all oath administration ceremonies held and the total number of persons issued the oath at each ceremony, in accordance with USCIS instructions. The report will include a list of persons attending naturalization oath ceremonies during the month, and certified copies of any court orders granting changes of name.

(b) *Petitions filed for de novo hearings.* The clerk of court must submit to USCIS a monthly report of all persons who have filed *de novo* review petitions before the court. The report shall include each petitioner's name, alien registration number, date of filing of the petition for a *de novo* review, and, once an order has been entered, the disposition.

(c) *Other proceedings and orders.* The clerk of court must forward to USCIS copies of the records of such other proceedings and other orders instituted on or issued by the court affecting or relating to the naturalization of any person as may be required from time to time.

(d) *Use of reports for accounting purposes.* State and federal courts may use



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the reports as a monthly billing document, submitted to USCIS for reimbursement in accordance with section 344(f)(1) of the Act. USCIS will use the information submitted to calculate costs incurred by courts in performing their naturalization functions. State and federal courts will be reimbursed pursuant to terms set forth in annual agreements entered into between DHS and the Administrative Office of United States Courts.

[76 FR 53804, Aug. 29, 2011]

### § 339.3 Relinquishment of naturalization jurisdiction.

Whenever a court relinquishes naturalization jurisdiction, the clerk of court shall, within ten days following the date of relinquishment, furnish the district director having administrative jurisdiction over the place in which the court is located, a certified copy of the order of court relinquishing jurisdiction. A representative of the Service shall thereafter examine the naturalization records in the office of the clerk of court and shall bind and lock them. The clerk of court shall return all unused forms and blank certificates of naturalization to the district director with his monthly report on Form N-4.

[22 FR 9825, Dec. 6, 1957]

### § 339.4 Binding of naturalization records.

Whenever a volume of petitions for naturalization, applications to take the oath of allegiance, declarations of intention, orders of court, or other documents affecting or relating to the naturalization of persons is completed, it shall be bound and locked by the clerk of court.

[22 FR 9825, Dec. 6, 1957]

### § 339.5 Recordkeeping.

The maintenance of records and submission of reports under this chapter may be accomplished by either electronic or paper means.

[56 FR 50502, Oct. 7, 1991]

## PART 340—REVOCATION OF NATURALIZATION

Sec.

340.1 [Reserved]

340.2 Revocation proceedings pursuant to section 340(a) of the Act.

AUTHORITY: 8 U.S.C. 1103, 1443.

### § 340.1 [Reserved]

### § 340.2 Revocation proceedings pursuant to section 340(a) of the Act.

(a) *Recommendations for institution of revocation proceedings.* Whenever it appears that any grant of naturalization may have been illegally procured or procured by concealment of a material fact or by willful misrepresentation, and a prima facie case exists for revocation pursuant to section 340(a) of the Act, USCIS will make a recommendation regarding revocation.

(b) *Recommendation for criminal prosecution.* If it appears to USCIS that a case described in paragraph (a) of this section is amenable to criminal penalties under 18 U.S.C. 1425 for unlawful procurement of citizenship or naturalization, the facts will be reported to the appropriate United States Attorney for possible criminal prosecution.

[76 FR 53804, Aug. 29, 2011]

## PART 341—CERTIFICATES OF CITIZENSHIP

Sec.

341.1 Application.

341.2 Examination upon application.

341.3 Depositions.

341.4 Surrender of immigration documents.

341.5 Decision.

AUTHORITY: Pub. L. 82-414, 66 Stat. 173, 238, 254, 264, as amended; 8 U.S.C. 1103, 1409(c), 1443, 1444, 1448, 1452, 1455; 8 CFR part 2.

SOURCE: 30 FR 5472, Apr. 16, 1965, unless otherwise noted.

### § 341.1 Application.

An application for a certificate of citizenship by or in behalf of a person who claims to have acquired United States citizenship under section 309(c) of the Act or to have acquired or derived United States citizenship as specified in section 341 of the Act must be submitted on the form designated by USCIS with the fee specified in 8 CFR

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103.7(b)(1) and in accordance with the instructions on the form.

[76 FR 53804, Aug. 29, 2011]

### § 341.2 Examination upon application.

(a) *Personal appearance of applicant and parent or guardian*—(1) *When testimony may be omitted.* An application may be processed without interview if the USCIS officer adjudicating the case has in the administrative file(s) all the required documentation necessary to establish the applicant's eligibility for U.S. citizenship, or if the application is accompanied by one of the following:

(i) A Department of State Form FS-240 (Report of Birth Abroad of a Citizen of the United States);

(ii) An unexpired United States passport issued initially for a full five/ten-year period to the applicant as a citizen of the United States, or

(iii) The applicant's parent(s)' naturalization certificate(s).

(2) *Testimony required.* Each applicant, when notified to do so, shall appear in person before an officer for examination under oath or affirmation upon the application. A person under 18 years of age must have a parent or guardian apply, appear, and testify for the applicant, unless one is unavailable and the district director is satisfied that the applicant is old enough to provide reliable testimony. The same rule will apply for incompetent applicants. At the examination the applicant and the acting parent or guardian, if necessary, shall present testimony and evidence pertinent to the claim to citizenship and shall have the right to review and rebut any adverse evidence on file, and to cross-examine witnesses called by the Government.

(b) *Witness*—(1) *Personal appearance.* A witness shall be called to testify under oath or affirmation at the discretion of USCIS only if that person's testimony is needed to prove a particular point, and only if alternative proof is unavailable or more difficult to produce than is the witness.

(2) *Substitution and waiver.* When testimony is deemed necessary by the district director and the presentation of the person or persons through whom citizenship is claimed is precluded by reason of death, refusal to testify, unknown whereabouts, advanced age,

mental or physical incapacity, or severe illness or infirmity, another witness or witnesses shall be produced. A substitute witness also may be produced in lieu of such person if such person is a member of the United States Armed Forces serving outside the United States in an area where his testimony could not be taken without imposing extreme hardship upon him, or without unduly delaying action on the application, and no issue is present which can be resolved only by this testimony.

(c) *Proof.* The burden of proof shall be upon the claimant, or his parent or guardian if one is acting in his behalf, to establish the claimed citizenship by a preponderance of the evidence.

(d) *Assignment and authority of officer.* USCIS will conduct the examination provided for in paragraphs (a) and (b) of this section. The assigned officer shall have authority to administer oaths or affirmations; to present and receive evidence; to rule upon offers of proof; to take or cause to be taken depositions or interrogatories; to regulate the course of the examination; to examine and cross-examine all witnesses appearing in the proceedings; to grant or order continuances; to consider and rule upon objections to the introduction of evidence; to make a report and recommendation as to whether the application shall be granted or denied, and to take such other action as may be appropriate to the conduct of the examination and the disposition of the application.

(e) *Conduct of examination.* The assigned officer shall, at the commencement of the examination of the claimant or the acting parent or guardian, advise them of their rights as set forth in paragraphs (a) and (f) of this section, and shall interrogate them under oath or affirmation with regard to each assertion made in the application and any other matter pertinent to the claim to citizenship; in addition, when a witness is deemed necessary, he shall interrogate each witness with regard to pertinent matters within the personal knowledge of the witness, such as the relationship between the claimant and the citizen source or sources; the citizenship of the latter, and any possible expatriatory acts performed by the

claimant and the citizen source or sources. He may, in his discretion, have a transcript made of the testimony. At the conclusion of the examination of the claimant or the acting parent or guardian, all corrections made on the applications form shall be consecutively numbered and recorded in the space provided therefor in the form. The affidavit shall then be signed and sworn to or affirmed by the claimant or the acting parent or guardian; and the remainder of the affidavit completed and signed by the assigned officer.

(f) *Representation during proceedings.* The claimant shall have the right to representation during the proceedings, as provided in part 292 of this chapter, and such representative shall have the right to examine and cross-examine witnesses appearing in the proceedings; to introduce evidence; to object to the introduction of evidence, which objections shall be stated succinctly and entered on the record, and to submit briefs. If the claimant is not represented by an attorney or representative, the assigned officer shall assist him in the introduction of all evidence available in his behalf.

[30 FR 5472, Apr. 16, 1965; 30 FR 5621, Apr. 21, 1965, as amended at 32 FR 6260, Apr. 21, 1967; 45 FR 84011, Dec. 22, 1980; 51 FR 35629, Oct. 7, 1986; 66 FR 32147, June 13, 2001; 76 FR 53804, Aug. 29, 2011]

### § 341.3 Depositions.

If satisfied that a witness whose testimony is essential is not available for examination in the United States, the assigned officer may authorize the taking of a deposition abroad by written interrogatories before a DHS or Department of State official.

[30 FR 5472, Apr. 16, 1965, as amended at 76 FR 53804, Aug. 29, 2011]

### § 341.4 Surrender of immigration documents.

Each claimant shall surrender any immigration identification and permanent resident cards in his or her possession.

[30 FR 5472, Apr. 16, 1965, as amended at 63 FR 70316, Dec. 21, 1998]

### § 341.5 Decision.

(a) *Adjudication.* USCIS may adjudicate the application only after the appropriate approving official has reviewed the report, findings, recommendation, and endorsement of the USCIS officer assigned to adjudicate the application.

(b) *Approval.* If the application is granted, USCIS will prepare a certificate of citizenship and, unless the claimant is unable by reason of mental incapacity or young age to understand the meaning of the oath, he or she must take and subscribe to the oath of renunciation and allegiance prescribed by 8 CFR 337 before USCIS within the United States. Except as provided in paragraph (c), delivery of the certificate in accordance with 8 CFR 103.2(b)(19) and 8 CFR 103.8 must be made in the United States to the claimant or the acting parent or guardian.

(c) *Approval pursuant to section 322(d) of the Act.* Persons eligible for naturalization pursuant to section 322(d) of the Act may subscribe to the oath of renunciation and allegiance and may be issued a certificate of citizenship outside of the United States, in accordance with 8 U.S.C. 1443a.

(d) *Denial.* If USCIS denies the application, the applicant will be furnished the reasons for denial and advised of the right to appeal in accordance with 8 CFR 103.3.

(e) *Subsequent application.* After an application for a certificate of citizenship has been denied and the time for appeal has expired, USCIS will reject a subsequent application submitted by the same individual and the applicant will be instructed to submit a motion to reopen or reconsider in accordance with 8 CFR 103.5. The motion must be accompanied by the rejected application and the fee specified in 8 CFR 103.7.

[76 FR 53804, Aug. 29, 2011]

## PART 342—ADMINISTRATIVE CANCELLATION OF CERTIFICATES, DOCUMENTS, OR RECORDS

Sec.

342.1 Notice.

342.2 Service of notice.

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- 342.3 Allegations admitted; no answer filed; no personal appearance requested.
- 342.4 Answer asserting defense; personal appearance requested.
- 342.5 Conduct of examination.
- 342.6 Depositions.
- 342.7 Report and recommendation.
- 342.8 Appeals.
- 342.9 Notice re 18 U.S.C. 1428.

AUTHORITY: 8 U.S.C. 1103, 1453.

SOURCE: 28 FR 209, Jan. 9, 1963, unless otherwise noted.

### § 342.1 Notice.

If it shall appear to a district director that a person has illegally or fraudulently obtained or caused to be created a certificate, document, or record described in section 342 of the Act, a notice shall be served upon the person of intention to cancel the certificate, document, or record. The notice shall contain allegations of the reasons for the proposed action and shall advise the person that he may submit, within 60 days of service of the notice, an answer in writing under oath or affirmation showing cause why the certificate, document, or record should not be canceled, that he may appear in person before a naturalization examiner in support of, or in lieu of his written answer, and that he may have present at that time, without expense to the Government, an attorney or representative qualified under part 292 of this chapter. In such proceedings the person shall be known as the respondent.

[29 FR 5511, Apr. 24, 1964, as amended at 37 FR 2767, Feb. 5, 1972]

### § 342.2 Service of notice.

The notice required by 8 CFR 342.1 must be by personal service as described in 8 CFR 103.8(a)(2).

[76 FR 53805, Aug. 29, 2011]

### § 342.3 Allegations admitted; no answer filed; no personal appearance requested.

If the answer admits all material allegations in the notice, or if no answer is filed within the 60-day period or any extension thereof and no personal appearance is requested within such period or periods, it shall be deemed to authorize the district director, without further notice to respondent, to find the facts to be as alleged in the notice

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and to cancel the certificate, document, or record. No appeal shall lie from such decision. Written notice of the decision shall be served upon the respondent with demand for surrender of the certificate, document, or record forthwith.

### § 342.4 Answer asserting defense; personal appearance requested.

If the respondent files an answer within the prescribed period asserting a defense to the allegations in the notice, or requests a personal appearance, with or without an answer, the district director shall designate a naturalization examiner to consider the case. The respondent shall be notified that he may appear in person or through counsel with any witnesses and evidence in defense of the allegations, and shall be informed of the date, time, and place for such appearance.

### § 342.5 Conduct of examination.

(a) *Authority of naturalization examiner.* The naturalization examiner assigned to consider the case shall have authority to administer oaths or affirmations to respondent and witnesses, issue subpoenas, present and receive evidence, rule upon offers of proof, take or cause depositions or interrogatories to be taken, regulate the course of the examination, take testimony of respondent and witnesses, grant continuances, consider and rule upon objections to the introduction of evidence, make recommendations to the district director as to whether cancellation shall be ordered or the proceedings terminated, and to take any other action as may be appropriate to the conduct and disposition of the case.

(b) *Assignment of additional officer.* The district director may, in his discretion, assign an officer of the Service to examine and cross-examine the respondent and witnesses and to present evidence pertinent to the case. The naturalization examiner designated under § 342.4 may take such part in the proceedings as he may deem necessary.

(c) *Examination.* The naturalization examiner designated under § 342.4 shall, prior to commencement of the examination, make known to the respondent his official capacity and that of any officer assigned pursuant to paragraph

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(b) of this section, the nature of the proceedings, his right to representation by counsel, to examine or object to evidence against him, to present evidence in his own behalf, to cross-examine witnesses presented by the Government, and shall read the allegations in the notice to respondent and, if necessary, explain them to him. The respondent shall be asked whether he admits or denies the material allegations in the notice, or any of them, and whether he concedes illegality or fraud. If respondent admits all the material allegations and that the certificate, document, or record was procured by fraud or illegality, and no issue of law or fact remains, the naturalization examiner may determine that fraud or illegality has been established on the basis of the respondent's admissions. The allegations in the notice shall be taken as admitted if respondent, without reasonable cause, fails or refuses to attend or remain in attendance at the examination. The examination shall be recorded verbatim except for statements made off the record with the permission of the naturalization examiner.

(d) *Prior statements.* The naturalization examiner assigned to consider the case may receive in evidence any oral or written statement which is material and relevant to any issue in the case previously made by the respondent or by any other person during any investigation, examination, hearing, trial, proceeding, or interrogation.

[28 FR 209, Jan. 9, 1963, as amended at 32 FR 3340, Feb. 28, 1967]

### § 342.6 Depositions.

Upon good cause shown, the testimony of any witness may be taken by depositions, either orally or upon written interrogatories before a person having authority to administer oaths (affirmations), as may be designated by the naturalization examiner.

[37 FR 2767, Feb. 5, 1972]

### § 342.7 Report and recommendation.

The naturalization examiner shall prepare a report summarizing the evidence, discussing the applicable law, and containing his findings and recommendations. The record, including

the report and recommendation, shall be forwarded to the district director, who shall sign the report, either approving or disapproving the recommendation. If the decision of the district director is that the proceedings be terminated, the respondent shall be so informed.

### § 342.8 Appeals.

Should the district director find that the certificate, document, or record was fraudulently or illegally obtained, he shall enter an order that it be cancelled and the certificate or document surrendered to the Service forthwith. Written notification of such action shall be given the respondent, with a copy of the decision, findings and decision of the district director, and he shall be informed of his right of appeal in accordance with the provisions of part 103 of this chapter.

### § 342.9 Notice re 18 U.S.C. 1428.

The notice to surrender a cancelled certificate of citizenship or copy thereof, prescribed by section 1428 of Title 18 of the United States Code, shall be given by the district director in whose district the person who has possession or control of such document resides.

[28 FR 9282, Aug. 23, 1963]

## PART 343—CERTIFICATE OF NATURALIZATION OR REPATRIATION; PERSONS WHO RESUMED CITIZENSHIP UNDER SECTION 323 OF THE NATIONALITY ACT OF 1940, AS AMENDED, OR SECTION 4 OF THE ACT OF JUNE 29, 1906

AUTHORITY: 8 U.S.C. 1101, 1103, 1443, 1454, and 1455.

### § 343.1 Application.

A person who lost citizenship of the United States incidental to service in one of the allied armies during World War I or II, or by voting in a political election in a country not at war with the United States during World War II, and who was naturalized under the provisions of section 323 of the Nationality Act of 1940, as amended, or a person who, before January 13, 1941, resumed United States citizenship under the

twelfth subdivision of section 4 of the act of June 29, 1906, may obtain a certificate evidencing such citizenship by making application in accordance with USCIS instructions. The applicant shall be required to appear in person before an assigned officer for interrogation under oath or affirmation upon the application. When the application is approved, a certificate of naturalization or repatriation shall be issued and delivered in person, in the United States only, upon the applicant's signed receipt therefor. If the application is denied, the applicant shall be notified of the reasons therefor and his right to appeal in accordance with the provisions of part 103 of this chapter.

[23 FR 9125, Nov. 26, 1958, as amended at 32 FR 9635, July 4, 1967; 76 FR 53805, Aug. 29, 2011]

**PART 343a—NATURALIZATION AND CITIZENSHIP PAPERS LOST, MUTILATED, OR DESTROYED; NEW CERTIFICATE IN CHANGED NAME; CERTIFIED COPY OF REPATRIATION PROCEEDINGS**

Sec.

343a.1 Application for replacement of or new papers relating to naturalization, citizenship, or repatriation.

343a.2 Return or replacement of surrendered certificate of naturalization or citizenship.

AUTHORITY: 8 U.S.C. 1101 note, 1103, 1435, 1443, 1454, and 1455.

**§ 343a.1 Application for replacement of or new papers relating to naturalization, citizenship, or repatriation.**

(a) *Lost, mutilated, or destroyed naturalization papers.* A person whose declaration of intention, certificate of naturalization, citizenship, or repatriation, or whose certified copy of proceedings under the act of June 25, 1936, as amended, or under section 317(b) of the Nationality Act of 1940, or under section 324(c) of the Immigration and Nationality Act, or under the provisions of any private law, has been lost, mutilated, or destroyed, must apply on the form designated by USCIS with the fee specified in 8 CFR 103.7(b)(1) and in accordance with the form instructions.

(b) *New certificate in changed name.* A naturalized citizen whose name has been changed after naturalization by order of court or by marriage must apply for a new certificate of naturalization, or of citizenship, in the changed name.

(c) *Adjudication and disposition.* (1) *Interview.* The applicant shall only be required to appear in person for interview under oath or affirmation in specific cases. Those cases which necessitate an interview enabling an officer to properly adjudicate the application at the office having jurisdiction will be determined by USCIS.

(2) *Approval.* If an application for a new certificate of naturalization, citizenship, or repatriation or a new declaration of intention is approved, the new certificate or declaration will be issued and delivered by personal service in accordance with 8 CFR 103.8(a)(2). If an application for a new certified copy of the proceedings under the Act of June 25, 1936, as amended, or under section 317(b) of the Nationality Act of 1940, or under section 324(c) of the Immigration and Nationality Act, or under the provisions of any private law is approved, a certified photocopy of the record of the proceedings will be issued. If, subsequent to naturalization or repatriation, the applicant's name was changed by marriage, the certification of the photocopy will show both the name in which the proceedings were conducted and the changed name. The new certified copy will be delivered to the applicant in accordance with 8 CFR 103.8(a)(2).

(3) *Denial.* If the application is denied, the applicant shall be notified of the reasons for the denial and of the right to appeal in accordance with 8 CFR 103.3.

[23 FR 9125, Nov. 26, 1958, as amended at 32 FR 9635, July 7, 1967; 51 FR 35629, Oct. 7, 1986; 76 FR 53805, Aug. 29, 2011]

**§ 343a.2 Return or replacement of surrendered certificate of naturalization or citizenship.**

A certificate of naturalization or citizenship which is contained in a USCIS file, and which was surrendered on a finding that loss of nationality occurred directly or through a parent as a result of the application of any of the

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## § 343b.3

following sections of law may, upon request, be returned to the person to whom it was originally issued, notwithstanding the fact that he or she has since been naturalized or repatriated in the United States or abroad:

(a) Section 404 (b) or (c) of the Nationality Act of 1940;

(b) Section 352 of the Immigration and Nationality Act, which was invalidated by *Schneider v. Rusk*, 377 U.S. 163;

(c) Section 401(e) of the Nationality Act of 1940;

(d) Section 349(a)(5) of the Immigration and Nationality Act, which was invalidated by *Afroyim v. Rusk*, 387 U.S. 253;

(e) Section 301(b) of the Immigration and Nationality Act

(f) Section 301(c) of the Immigration and Nationality Act relative to persons born after May 24, 1934, which was invalidated by amendment to section 301(b) on October 27, 1972, Public Law 92-584.

If, after having been surrendered to the Department of State or to USCIS, the certificate was lost, mutilated, or destroyed as a result of action by USCIS or that Department, a replacement certificate may be issued in the name shown in the surrendered certificate without fee and without requiring the submission of an application. A surrendered certificate shall not be regarded as mutilated and a replacement shall not be issued solely because of holes made in it to accommodate a fastener, unless the citizen declines to accept the return of the surrendered certificate in that condition and insists upon issuance of a replacement. When it is desired that the replacement certificate be furnished in a name other than the one shown in the surrendered certificate, the regular application procedure with payment of fee must be followed.

[51 FR 35629, Oct. 7, 1986, as amended at 76 FR 53805, Aug. 29, 2011]

### PART 343b—SPECIAL CERTIFICATE OF NATURALIZATION FOR RECOGNITION BY A FOREIGN STATE

Sec.

343b.1 Application.

343b.2 Number of applications required.

343b.3 Interview.

343b.4 Applicant outside of United States.

343b.5 Verification of naturalization.

343b.11 Disposition of application.

AUTHORITY: 8 U.S.C. 1103, 1443, 1454, 1455.

#### § 343b.1 Application.

A naturalized citizen who desires to obtain recognition as a citizen of the United States by a foreign state shall submit an application on the form designated by USCIS with the fee specified in 8 CFR 103.7(b)(1) and in accordance with the form instructions. He shall not be furnished with verification of his naturalization for such purpose in any other way. An applicant who is a claimant against a foreign government for property damage pursuant to the provisions of a peace treaty shall not be requested to furnish the name, official title, and address of a foreign official unless such information is available when the investigation of the applicant is conducted. The applicant shall be required to appear in person before an assigned officer for interrogation under oath or affirmation upon the application.

[32 FR 9636, July 4, 1967, as amended at 56 FR 50502, Oct. 7, 1991; 76 FR 53805, Aug. 29, 2011]

#### § 343b.2 Number of applications required.

A special certificate of naturalization is delivered to one foreign government official only. An applicant who desires recognition as a U.S. citizen by more than one foreign official, whether in the same country or not, must file a separate application for each certificate required.

[32 FR 9636, July 4, 1967]

#### § 343b.3 Interview.

When the application presents a prima facie case, USCIS may issue a certificate without first interviewing the applicant. In all other cases, the applicant must be interviewed. The interviewing officer must provide a complete written report of the interview before forwarding the application for issuance of the certificate.

[76 FR 53805, Aug. 29, 2011]

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##### § 343b.4 Applicant outside of United States.

If the application is received by a DHS office outside the United States, an officer will, when practicable, interview the applicant before the application is forwarded to USCIS for issuance of the certificate. When an interview is not practicable, or is not conducted because the application is submitted directly to USCIS in the United States, the certificate may nevertheless be issued and the recommendation conditioned upon satisfactory interview by the Department of State. When forwarding the certificate in such a case, USCIS will inform the Secretary of State that the applicant has not been interviewed, and request to have the applicant interviewed regarding identity and possible expatriation. If identity is not established or if expatriation has occurred, the Department of State will return the certificate to USCIS for disposition.

[76 FR 53805, Aug. 29, 2011]

##### § 343b.5 Verification of naturalization.

The application shall not be granted without first obtaining verification of the applicant's naturalization.

[32 FR 9636, July 4, 1967]

##### § 343b.11 Disposition of application.

(a) *Approval.* If the application is granted, USCIS will prepare a special certificate of naturalization and forward it to the Secretary of State for transmission to the proper authority of the foreign state in accordance with procedures agreed to between DHS and the Department of State, retain the application and a record of the disposition in the DHS file, and notify the applicant of the actions taken.

(b) *Denial.* If the application is denied, the applicant will be notified of the reasons for denial and of the right to appeal in accordance with 8 CFR 103.3.

[76 FR 53806, Aug. 29, 2011]

#### PART 343c—CERTIFICATIONS FROM RECORDS

AUTHORITY: 5 U.S.C. 552; 8 U.S.C. 1103.

#### 8 CFR Ch. I (1–12 Edition)

##### § 343c.1 Application for certification of naturalization record of court or certificate of naturalization or citizenship.

An application for certification of a naturalization record of any court, or of any part thereof, or of any certificate of naturalization, repatriation, or citizenship, under section 343(e) of the Act for use in complying with any statute, Federal or State, or in any judicial proceeding, shall be made on the form designated by USCIS in accordance with the form instructions.

[40 FR 50703, Oct. 31, 1975, as amended at 76 FR 53806, Aug. 29, 2011]

#### PART 349—LOSS OF NATIONALITY

AUTHORITY: Sec. 103, 66 Stat. 173; 8 U.S.C. 1103. Interprets or applies 401(i), 54 Stat. 1169; 8 U.S.C. 801, 1946 ed.

##### § 349.1 Japanese renunciation of nationality.

A Japanese who renounced United States nationality pursuant to the provisions of section 401(i), Nationality Act of 1940, who claims that his renunciation is void, shall complete Form N-576, Supplemental Affidavit to be Submitted with Applications of Japanese Renunciants. The affidavit shall be submitted to the Assistant Attorney General, Civil Division, Department of Justice, Washington, DC 20530, with a covering letter requesting a determination of the validity of the renunciation.

[32 FR 9636, July 4, 1967]

#### PART 392—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: PERSONS WHO DIE WHILE SERVING ON ACTIVE DUTY WITH THE UNITED STATES ARMED FORCES DURING CERTAIN PERIODS OF HOSTILITIES

Sec.

392.1 Definitions.

392.2 Eligibility for posthumous citizenship.

392.3 Application for posthumous citizenship.

392.4 Issuance of a certificate of citizenship.

AUTHORITY: 8 U.S.C. 1103, 1440 and note, and 1440–1; 8 CFR part 2.



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SOURCE: 56 FR 22822, May 17, 1991, unless otherwise noted.

### § 392.1 Definitions.

As used in this part:

*Active-duty status* means full-time duty in the active military service of the United States, and includes full-time training duty, which constitutes qualifying service under section 329(a) of the Act. Active service in the United States Coast Guard during one of the periods of hostilities specified herein shall constitute service in the military, air, or naval forces of the United States. Active-duty status also includes annual training duty and attendance, while in the active military service, at a service school designated by the military authorities under 10 U.S.C. 101(22). The order of a national guardsman into active duty for training under 10 U.S.C. 672 constitutes service in active-duty status in the military forces of the United States. Active duty in a noncombatant capacity is qualifying service.

*Decedent* means the person on whose behalf an application for a certificate of posthumous citizenship is made.

*Induction, enlistment, and reenlistment*, refer to the decedent's place of entry into active duty military service.

*Korean Hostilities* relates to the period from June 25, 1950, to July 1, 1955, inclusive.

*Lodge Act* means the Act of June 30, 1950, which qualified for naturalization nonresident aliens who served honorably for 5 years in the United States Army during specified periods, notwithstanding that they never formally became lawful permanent residents of the United States.

*Next-of-kin* means the closest surviving blood or legal relative of the decedent in the following order of succession:

- (1) The surviving spouse;
- (2) The decedent's surviving son or daughter, if the decedent has no surviving spouse;
- (3) The decedent's surviving parent, if the decedent has no surviving spouse or sons or daughters; or,
- (4) The decedent's surviving brother or sister, if none of the persons described in paragraphs (1) through (3) of this definition survive the decedent.

*Other periods of military hostilities* means any period designated by the President under Executive Order as a period in which Armed Forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force.

*Representative* means:

(1) The duly appointed executor or administrator of the decedent's estate, including a special administrator appointed for the purpose of seeking the decedent's naturalization; or,

(2) The duly appointed guardian, conservator, or committee of the decedent's next-of-kin; or,

(3) A service organization listed in 38 U.S.C. 3402, or chartered by Congress, or State, or other service organization recognized by the Department of Veterans Affairs.

*Vietnam Hostilities* relates to the period from February 28, 1961, to October 15, 1978, inclusive.

*World War I* relates to the period from April 6, 1917, to November 11, 1918, inclusive.

*World War II* relates to the period from September 1, 1939, to December 31, 1946, inclusive.

### § 392.2 Eligibility for posthumous citizenship.

(a) *General*. Any alien or noncitizen national of the United States is eligible for posthumous United States citizenship who:

(1) Served honorably in an active-duty status with the military, air, or naval forces of the United States during World War I, World War II, the Korean Hostilities, the Vietnam Hostilities, or in other periods of military hostilities designated by the President under Executive Order; and,

(2) Died as a result of injury or disease incurred in or aggravated by service in the United States Armed Forces during a period of military hostilities listed in paragraph (a)(1) of this section. Where the person died subsequent to separation from military service, the death must have resulted from an injury or disease that was sustained, acquired, or exacerbated during active-duty service in a qualifying period of military hostilities as specified in this part.

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(b) *Qualifying enlistment.* In conjunction with the qualifying service as described in paragraph (a)(1) of this section, the decedent must have:

(1) Enlisted, reenlisted, or been inducted in the United States, the Canal Zone, American Samoa, or Swains Island;

(2) Been lawfully admitted to the United States for permanent residence, at any time; or,

(3) Enlisted or reenlisted in the United States Army pursuant to the provisions of the Lodge Act. In such case, the decedent shall be considered to have been lawfully admitted to the United States as a permanent resident for purposes of this section, provided he or she:

(i) Entered the United States, its outlying possessions, or the Canal Zone, at some time during the period of army service, pursuant to military orders; and

(ii) Was honorably discharged following completion of at least 5 full years of active duty service, even though the active-duty service may not have occurred during a qualifying period of hostilities specified in section 329(a) of the Act.

(c) *Character of military service.* Where the character of military service is not certified as honorable by the executive department under which the person served, or where the person was dishonorably discharged or discharged under conditions other than honorable, such service shall not satisfy the requirement of paragraph (a)(1) of this section.

(d) *Certification of eligibility.* (1) The executive department under which the decedent served shall determine whether:

(i) The decedent served honorably in an active-duty status;

(ii) The separation from such service was under honorable conditions; and,

(iii) The decedent died as a result of injury or disease incurred in, or aggravated by active duty service during a qualifying period of military hostilities.

(2) The certification required by section 329A(c)(2) of the Act to prove military service and service-connected death must be requested by the applicant on the form designated by USCIS in accordance with the form instruc-

tions. The form will also be used to verify the decedent's place of induction, enlistment, or reenlistment.

[56 FR 22822, May 17, 1991, as amended at 76 FR 53806, Aug. 29, 2011]

### § 392.3 Application for posthumous citizenship.

(a) *Persons who may apply.* (1) Only one person who is either the next-of-kin or another representative of the decedent shall be permitted to apply for posthumous citizenship on the decedent's behalf. A person who is a next-of-kin who wishes to apply for posthumous citizenship on behalf of the decedent, shall, if there is a surviving next-of-kin in the line of succession above him or her, be required to obtain authorization to make the application from all surviving next-of-kin in the line of succession above him or her. The authorization shall be in the form of an affidavit stating that the affiant authorizes the requester to apply for posthumous citizenship on behalf of the decedent. The affidavit must include the name and address of the affiant, and the relationship of the affiant to the decedent.

(2) When there is a surviving next-of-kin, an application for posthumous citizenship shall only be accepted from a representative provided authorization has been obtained from all surviving next-of-kin. However, this requirement shall not apply to the executor or administrator of the decedent's estate. In the case of a service organization acting as a representative, authorization must also have been obtained from any appointed representative. A veterans service organization must submit evidence of recognition by the Department of Veterans Affairs. Once USCIS has granted posthumous citizenship to a person, no subsequent applications on his or her behalf shall be approved, nor shall any additional original certificates be issued, except in the case of an application for issuance of a replacement certificate for one lost, mutilated, or destroyed.

(b) *Application.* An application for posthumous citizenship must be submitted on the form designated by USCIS in accordance with the form instructions.

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(c) *Application period.* An application for posthumous citizenship must be filed no later than two years after the date of the decedent's death.

(d) *Denial of application.* When the application is denied, the applicant shall be notified of the decision and the reason(s) for denial. There is no appeal from the denial of an application under this part.

[56 FR 22822, May 17, 1991, as amended at 74 FR 26941, June 5, 2009; 76 FR 53806, Aug. 29, 2011]

### § 392.4 Issuance of a certificate of citizenship.

(a) *Approval of application.* When an application for posthumous citizenship under this part has been approved, USCIS will issue a Certificate of Citizenship to the applicant in the name of the decedent.

(b) *Delivery of certificate.* Delivery of the Certificate of Citizenship shall be made by registered mail to the address designated by the applicant. If the applicant resides outside the United States, the certificate shall be sent by registered mail to the Service office abroad, if one is located where delivery

is to be made; otherwise, it shall be forwarded to the nearest American Embassy or Consulate.

(c) *Effective date of citizenship.* Where the Service has approved an Application for Posthumous Citizenship (Form N-644), the decedent shall be considered a United States citizen as of the date of his or her death.

(d) *Ineligibility for immigration benefits.* The granting of posthumous citizenship under section 329A of the Immigration and Naturalization Act, as amended, and issuance of a certificate under paragraph (a) of this section, shall not entitle the surviving spouse, parent, son, daughter, or other relative of the decedent to any benefit under any provision of the Act. Nor shall such grant make applicable the provisions of section 319(d) of the Act to the surviving spouse.

(e) *Replacement certificate.* An application for a replacement Certificate of Citizenship must be submitted on the form designated by USCIS with the fee specified in 8 CFR 103.7(b)(1) and in accordance with the form instructions.

[56 FR 22822, May 17, 1991, as amended at 76 FR 53806, Aug. 29, 2011]